Supreme Court, U.S.
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Nos. 86-509, 86-564

In the Supreme Court of the United States

OCTOBER TERM, 1986

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT

v.

BEATY MAE GILLIARD, ET AL.

PHILLIP J. KIRK, SECRETARY OF NORTH CAROLINA DEPARTMENT OF HUMAN SERVICES, ET AL., APPELLANTS

v.

BEATY MAE GILLIARD, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

JOINT APPENDIX

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Jurisdictional Statement in No. 86-509 filed September 26, 1986
Jurisdictional Statement in No. 86-564 filed September 29, 1986
Probable Jurisdiction Noted December 8, 1986

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UNITED STATES DISTRICT COURT

Civil Docket No. 2660

BEATY MAE GILLIARD; SAMUEL ODELL DAVIS; LORRAINE GILLIARD, LORETTA GILLIARD; THOMAS GILLIARD, DANA GILLIARD, GREGORY GILLIARD, REGINALD GILLIARD, AND SAMUEL DAVIS, JR. GILLIARD, MINORS BY THEIR MOTHER AND NEXT FRIEND, BEATY MAE GILLIARD; ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED.

v.

CLIFTON M. CRAIG, INDIVIDUALLY AND AS NORTH CAROLINA COMMISSIONER OF SOCIAL SERVICES; NORTH CAROLINA BOARD OF SOCIAL SERVICES, A PUBLIC BODY CORPORATE; JOHN R. JORDAN, JR., MRS. THOMAS E. MEDLIN, MRS. NEIL J. GOODNIGHT, DR. BRUCE B. BLACKMON, SARAH AUSTIN, TROY H. THOMPSON AND ROBERT L. LYDAY, INDIVIDUALLY AND AS MEMBERS OF THE NORTH CAROLINA BOARD OF SOCIAL SERVICES; WALLACE H. KURALT, INDIVIDUALLY AND AS MECKLENBURG COUNTY DIRECTOR OF SOCIAL SERVICES; AND MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES.

DATE	NR	PROCEEDINGS
5-5-70	1	Fil complaint; *1a*, w/Order appointing Beatty Mae Gilliard next friend for her children, w/petition; fil and ent order that Beaty Mae Gilliard be allowed to prosecute action w/o prepayment of costs, *1b*, w/affidavit; and ent and fil order allowing Samuel Odell Davis to prosecute w/o prepayment of costs,

DATE	NR	PROCEEDINGS
		w/affidavit *1c*; 9 true-copies of s. & c. handed to US Marshal (COV6, #168) (CO V 6, #169 & 170)
5-5-70	2	Fil application for temp. restraining order, w/memorandum in support.
5-12-70	3	Fil Marshal's Return—served ROBERT LYDAY, individually and as a member of the N. C. Board of Soc. Servs., on 5/7/70.
5-13-70	4	Fil Motion to Convene Three-Judge Court.
5-18-70	5	Fil summons w/Marshal's Return—served WALLACE H. KURALT, individually and as Mecklenburg County Director of Social Services on 5-/2-70
6-1-70	6	Fil Marshal's Return—served TROY H. THOMPSON w/summons and complaint 5/12/70
6-2-70	7	Fil ANSWER of defs. KURALT and MECK. CO. DEPT. OF SOCIAL SERVICES, w/cert. of serv.
6-4-70	8	Fil ANSWER of defs CRAIG, N. C. BOARD OF SOCIAL SERVICES, and other STATE DEFTS. by Robert Morgan, Attorney General, w/cert. of serv.
6-5-70		Hearing on motion for temp. restraining order & 3-judge court motion.
6-10-70	9	Ent and fil Order (JBM)—allowing designation of a 3-judge court; disallowing pltfs. petition for temp. restraining order pending decision of 3-judge court. (CO Vol #VI, 197) Copies mailed to counsel

DATE	NR	PROCEEDINGS
6-17-70	10	Fil Notification and Request for Designation of Three-Judge Court
6-17-70	11	Ent and fil (CFH)—Designation of Three-Judge Court—Judges Craven, Jones and McMillan. Counsel for parties notified; file mailed each Judge.
7-13-70	12	Fil motion for preliminary injunction and motion for s. j. w/pltf's brief & cert. of serv. Copies to each judge; Mem. in Opposition to Absention, w/cert. of serv. Copies to each judge
8-17-70	13	Fil Motion of defs. to Dismiss, w/cert. of serv. Copies to each judge
9-8-70	14	Fil defts' response to pltfs mem. in opposition to absention, w/cert. of serv. Copies to each judge together w/true copies of motion to dismiss (above) and deft's brief.
10-26-70	15	Fil Supp. Att. to Pltfs' Brief, w/cert. of serv. Copies to 3-Judges
11-5-70	16	Fil Motion of pltf that Thomas W. Pulliam be allowed to appear for pltfs
11-5-70		Three-Judge hearing held—taken under advisement
11-6-70	17	Fil Supplement to pltfs' Brief; w/cert. of serv. copies handed to judges
11-24-70	18	Fil pltfs' motion for Court Order that defts pay pltfs. benefits they would have received but for reduction complained of. Copy to 3-judges
11-30-70	19	Fil Supplementary Exhibit to Plfts' Brief; copies to judges
12-1-70	20	Fil Stipulation to Facts; copies to judges
5-21-71	21	Fil defts Brief, w/cert. of serv.

DATE	NR	PROCEEDINGS
5-21-71		Further argument before three-judge court—taken under advisement
6-10-71	21	Fil Memorandum of Decision and Order (JBM)—Judge Craven concurring; Judge Jones dissenting Opinion #21a—payments of $217 per mo to be restored retroactive to March, 1970. Copies to Legal Aid, Mr. Cobb & Mr. Covington
12-13-71	22	Ent and fil Judgment (JBM)—in favor pltfs, granting individual relief, class relief, prospective relief, retroactive relief and etc. (CO Vol. X, #219) Copies to all attorneys *Iss JS 6*
1-28-72	23	Fil defendants' notice of appeal to the Supreme Court of the U.S., pursuant to Title 28 USCA Sec. 1253, with designation of record on appeal, with question presented by appeal: whether pltfs. are entitled to judgment that it is improper to reduce or withhold payment to AFDC beneficiaries of any funds on basis of crediting outside income or resources of one or more members of the family group. Copies to counsel, of notice.
2-11-72	24	Fil defs' Motion for Stay, w/cert. of serv.
3-20-72	25	Ent and fil order requesting Clerk of US Supreme Court to secure safekeeping of record on appeal and return it to Clerk at Charlotte upon completion of matter of appeal.

DATE	NR	PROCEEDINGS
3-21-72	26	Ent and fil order allowing defs' motion for stay. Copies mailed counsel of record.
3-21-72		Certifying record to Clerk, U.S. Supreme Court, Washington, D.C.
11-13-72	27	Fil certified copy of Judgment from U.S. Supreme Court affirming District Court's decision. Receipt acknowledged.
12-18-72		Filing record on appeal rec'd from Supreme Court this date. Acknowledged.
5-2-74	28	Fil ltr. from Wm. Woodward Webb, Associate Attorney, Raleigh, N. C., addressed to JBM, ltr. dated 5-1-74, enclosing "List A" comprising compilation of persons to whom Gilliard notices were sent and who responded for their claim and "List B" comprising compilation of those persons to whom Gilliard notices were sent but who did not respond.
8-15-74	29	Fil copy of letter, dated 7-11-74 from Mrs. Mitchiner to Robert Morgan, Attorney General, State of N. C., re persons not receiving notice.
8-15-74	30	Ent and fil order (JBM)—all six applications in question to be processed immediately, and paid immediately, if on merits claimants are entitled without regard to date of their applications; defts. to file report by 8-30-74, showing full compliance with this order or facts in detail showing why on the

DATE	NR	PROCEEDINGS
		merits (as opposed to time of filing claims) no benefits are due. Copies to all counsel. CO Vol. XVII-#38.
8-21-74	31	Fil Notice of Appeal of defs. to USCA for Fourth Circuit, appealing order entered on 8/15/74. Copies to attorneys, USCA w/$50 docket fee
8-21-74	32	Fil Motion for Stay, or in Alternative, Motion for Extension of Time within which to comply w/order of 8/15/74.
8-21-74	33	Fil Appeal Bond
8-23-74	34	Ent and fil Order (JBM)—Motion for stay not allowed—additional time to report compliance to 8-15-74 order allowed respondents to 9-15-74. True-copies to counsel
8-27-74	35	Fil pltfs' Motion in Opposition to Def's Motion for Stay or for extension of time within which to comply w/order of 8-15-74 w/Notice of Motion and Proof of Service
9-18-74		Record, in two volumes, certified to Clerk USCA (Record on Appeal)
10-17-74	36	ORDER (JBM)—defts have fully complied with all the terms of the final judgment entered on December 13, 1971. Copies to counsel
10-31-74	37	ORDER (FCCA)—appeal dismissed pursuant to Rule 42(b) of FRAP. Record returned and filed
1985		
5-30	38	MOTION FOR FURTHER RELIEF, by pltfs.—Handed to JBM

DATE	NR	PROCEEDINGS
5-30	39	MEMORANDUM OF LAW IN SUPPORT of Plaintiffs' Motion for Further Relief
6-06	40	MOTION FOR EXTENSION OF TIME by defts. to & includ. 8-5-85 to respond to pltf's. mot. for further relief—w/cs & proposed Order.
6-06	41	ORDER (JBM)—Counsel for pltfs are directed to reply to deft's motion for ext. of time immediately. CC:Attys
6-10	42	REPLY TO DEFENDANTS' MOTION FOR EXTENSION OF TIME by Pltfs.—(JBM)
6-20	43	ORDER (JBM)—defts allowed to 7/30/85 to respond to motion for further relief. Clerk to calendar motion for hearing on August 5, 1985. CC: counsel & TL
7-16-85		Placed on *AUGUST 1985 MOTIONS CALENDAR*
07-19	44	MOTION FOR RELIEF FROM JUDGMENT, by Defendants—
07-19	45	MOTION FOR THREE JUDGE COURT PURSUANT to 28 USC 2281, et seq.
7-26	46	ORDER (JBM)—The court will limit the hearing scheduled for 8/5/85, to consideration of the motion for a 3-judge court. CC: counsel
7-26	47	PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR THREE-JUDGE COURT—handed to JBM

DATE	NR	PROCEEDINGS
7-30	48	DEFENDANTS' MOTION pursuant to Rule 19 FRCP, or in the Alternative Rule 14, FRCP
7-30	49	DEFENDANTS' BRIEF IN SUPPORT of Motions pursuant to Rules 19 and 14 FRCP
7-30	50	DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES regarding Plaintiffs' Motion for Further Relief and Defendants' Motion for Relief from Judgment
8-09	51	ORDER (JBM)—defendants' motion for a three-judge court pursuant to 28 USC 2281 is DENIED. CC: counsel CO VOL XXX, #393
8-13	52	STIPULATION by parties
8-15	53	ORDER (JBM)—1. Defts' motion for leave to file a third-party complaint against Heckler is GRANTED. 2. Defts immediately serve upon the Sec. copies of all documents. 3. Within 20 days, parties file brief legal memoranda on the legal issues. 4. Clerk set this case for a hearing on all outstanding motions. CC: counsel Filed Copy of 3rd P. Complaint provided N.S. Atty.
8-16	54	MOTION REQUESTING CERTIFICATION FOR INTERLOCUTORY APPEAL, by defts.
8-21	55	ORDER (JBM)—IT IS THEREFORE ORDERED that the motion for certification for interlocutory appeal is DENIED. CC:Attys
8-30		Placed on *SEPT. 16, 1985 MOTIONS CALENDAR.*

DATE	NR	PROCEEDINGS
9-05	56	DEFENDANTS' CERTIFICATE OF SERVICE regarding nos. 45, 47, 51, 55, et al.,
9-05	57	PLAINTIFFS' MEMORANDUM OF LAW–
9-06	58	DEFENDANTS' BRIEF REGARDING STATUTORY CHANGES AFFECTING COURT JUDGMENT
9-09	59	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS IN PART PLAINTIFFS' CLAIM FOR RETROACTIVE AFDC PAYMENTS
9-9	60	DEFENDANTS' IN PART MOTION TO DISMISS PLAINTIFFS' CLAIM FOR RETROACTIVE AFDC PAYMENTS–(Hdg. JBM)
9-13	61	MOTION TO CONTINUE HEARING ON ALL PENDING MOTIONS SCHEDULED FOR SEPTEMBER 18, 1985 by deft.–handed to JBM
9-16	62	AFFIDAVITS and DISCOVERY to be used in hearing on 9/18/85, by pltfs.
9-17	63	DECLARATION OF CAROL B. STACK
9-17	64	AFFIDAVIT OF PATRICIA HUNT
9-17	65	AFFIDAVIT of James Richardson
9-17	66	AFFIDAVIT of Dianne Thomas
9-18	67	MEMORANDUM OF ADDITIONAL AUTHORITY REGARDING STATUTORY CHANGES AFFECTING COURT
9-18		Motion hearing JUDGMENT, by deft.

DATE	NR	PROCEEDINGS
10-01	68	FEDERAL DEFENDANT'S MOTION TO DISMISS and in the Alternative for Summary Judgment
10-09	68a	MOTION FOR EXTENSION of Time, by D-3rd-party pltfs, – proposed order to JBM
10-15	69	DEFENDANTS-THIRD PARTY PLAINTIFFS' RESPONSE to Federal Defendant's Motion to Dismiss and in the Alternative for S. J.
10-18	70	ORDER (JBM) – D-3rd-party pltfs granted until and including 10/21/85 to respond to 3rd-party defts Motion to Dismiss and in the Alternative for S. J. CC: counsel
10-23	71	MOTION TO DISMISS THE PLAINTIFFS' CONSTITUTIONAL CLAIMS, by defts.
10-31	72	PLAINTIFFS' REPLY TO STATE DEFENDANTS' MOTION TO DISMISS
11-08	73	PLAINTIFFS' REPLY TO FEDERAL AND STATE MEMORANDA
11-12	74	RESPONSE to Movants' Submission of Additional Authority
11-12	75	NOTICE OF ADDITIONAL AUTHORITY, by 3rd-Party Deft.
12-23	76	NOTICE OF ADDITIONAL AUTHORITY, by 3rd-party deft.
1986		
1-03	77	MOTION FOR LEAVE TO WITHDRAW AS COUNSEL, by Steven M. Shaber Handed to JBM
3/28	78	Notice of Additional Decisions (by Federal Defendants)

DATE	NR	PROCEEDINGS
5-07	79	MEMORANDUM OF DECISION (JBM)—Plaintiffs are entitled to relie as above indicated, and to costs and attorney fees. They will tender appropriate orders and serve them on all other counsel State defendants are entitled to appropriate relief in their cross-action against federal defendants. They will tender appropriate orders and serve them on all other counsel. CC:Attys—CO VOL XXXI #181
5-13	80	ORDER (JBM)—Typographical errors on pages 55, 60, 61, and 62 of the Memorandum of Decision filed May 6, 1986 have been corrected. The Clerk of court is directed to insert the corrected pages in the memorandum of decision in the court file. IT IS SO ORDERED. CC:Attys, CO COL XXXI 191
5-15	81	ORDER (JBM)—Attorney STEVEN SHABER's motion to withdraw as counsel is GRANT
5-16	81a	MOTION TO STAY MEMORANDUM OF DECISION PEND. APPEAL, w/Memo of Law, AFFID. and
5-21	82	NOTICE by Pltf's Counsel NOT. OF APPEAL attach. (Check was not incld.)
5-21	83	PLAINTIFFS' RESPONSE TO STATE DEFENDANTS' MOTION TO STAY
5-27	84	FEDERAL THIRD-PARTY DEFENDANT'S MOTION FOR CLARIFICATION OF MEMORANDUM OF DECISION—

DATE	NR	PROCEEDINGS
6-05	85	DEFENDANTS WITHDRAWAL OF MOTION FOR STAY AND NOTICE OF APPEAL UNTIL ENTRY OF AN ORDER BY THE COURT – (Hdg.JBM) –
6-18	86	PLAINTIFFS' RESPONSE TO FEDERAL THIRD-PARTY DEFENDANT'S MOTION FOR CLARIFICATION
6-25	87	DEFENDANTS/THIRD PARTY Plaintiffs Proposed Order – handed to JBM
6-25	88	STATE DEFENDANTS RESPONSE to Federal Third-Party Defendant's Motion for Clarification
6-25	89	Plaintiff's PROPOSED ORDER – handed to JBM
7-03	90	ORDER (JBM) – 3rd-party deft's motion for clarification of court's memorandum of decision is GRANTED. CC: counsel
7-03	91	FINAL ORDER (JBM) – 3rd-party defts are required to participate financially by paying the federal share of any payments required of state defts. as a result of this decision. Pltfs' motion for further relief is GRANTED and the pltfs. are entitled to costs and attorneys fees. The state defts!. motion for relief from judgment is DENIED. CC: counsel (EOD 7) CO VOL. XXXI, #255
7-07	92	FEDERAL THIRD-PARTY DEFENDANT'S Motion for Reconsideration of Memorandum of Decision

DATE	NR	PROCEEDINGS
7-09	93	NOTICE OF DEPOSITION, by pltfs. of Kay Fields on 7/17/86
7-14	94	MOTION TO STAY PENDING RECONSIDERATION, by Ds-3rd-party pltfs.
7-14	95	STATE DEFENDANTS/THIRD PARTY PLAINTIFFS'/MOTION FOR RECONSIDERATION OF MEMORANDUM OF DECISION – Handed to JBM
7-14	96	MOTION TO STAY PENDING APPEAL, by Ds-3rd-party pltfs. – Handed to
7-14	97	JUDGMENT IN A CIVIL CASE (CLERK) – Judgment is hereby entered in accordance with the Final Order of this court filed the 3rd day of July, 1986. CC: counsel of Record (EOD 7-14-86) CO VOL XXXI, #267
7-15	98	FEDERAL THIRD-PARTY DEFENDANT'S AMENDED MOTION FOR RECONSIDERATION OF MEMORANDUM OF DECISION AND FINAL ORDER – handed to JBM
7-17	99	MEMORANDUM OF LAW IN SUPPORT OF STAY PENDING APPEAL by the Defendants/Third-Party Plaintiffs
7-17	100	AFFIDAVIT of Kay C. Fields
7-17	101	DEFENDANTS/THIRD PARTY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION

DATE	NR	PROCEEDINGS
7-24	102	MEMORANDUM TO COUNSEL (JBM)—In response to current corresponder the court will not take action on any pending motions until a hearing can be conducted shortly after Aug. 8, 1986. The Clerk is requested to scheduled a hearing on Aug. 21, 1986, to determine all matters at issue. CC:Attys
7-25	103	PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS FOR RECONSIDERATION—
7-29	104	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—
7-31	105	ORDER (JBM)—hearing scheduled for 8/21/86 is POSTPONED. The clerk is requested to set the hearing for Tuesday, August 26, 1986. CC: counsel & TL
8-01	106	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, by Defendants-Third Party Plaintiffs, w/CS
8-12		Noticed for hrg. on pending mots. at 10:00 a.m. on 8-26-86 before JBM in Charles
8-21	107	NOTICE OF APPEAL to the FCCA by third-party deft. Otis R. Bowen, from final order of 7/3/86 and final judgment of 7/14/86. CC: counsel and FCCA with transmittal letter

DATE	NR	PROCEEDINGS
8-25	108	ORDER (JBM)—upon consideration of the Motion of the State Defendants for a Stay Pending Appeal and with the consent of the Pltfs., the Court now STAYS its Final Order of July 3, 1986, except as specified herein. CC: counsel
8-25	109	ORDER (JBM)—The motions of the state defendants and federal third party defendants for reconsideration are therefore DENIED. CC: counsel
9-02	110	NOTICE OF APPEAL to the Fourth Circuit Court of Appeals by Defts-Third-Party Plaintiffs—copy to FCCA with transmittal letter and docket sheet—Fil Fee paid R#16046
9-02	111	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, by the Defts-Third-Party-Plaintiffs
9-16	112	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, by The Third-Party Defendant, Otis R. Bowen, from the final order entered on 7/3/86, the final judgment entered on 7/14/86 and the ordered entered on 8/25/86, denying the motions for reconsideration.
10-14	113	PETITION FOR WRIT OF CERTIORARI by the Supreme Court of the U.S. allowed and docketed as No. 86-509.

DATE	NR	PROCEEDINGS
10-15	114	NOTICE OF APPEAL by 3rd-party deft. from final order entered on 8/25/86, denying the motions for reconsideration. CC: counsel and FCCA
10-20	115	PETITION FOR WRIT OF CERTIORARI BY THE SUPREME COURT OF THE U. S. ALLOWED AND DOCKETED as No. 86-564
10-23	116	ORDER (FCCA)—motions to hold these appeals in abeyance pending action by the U. S. Supreme Court on the appeals taken to that Court by the state and federal appellants is granted.
12-08	117	DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO PROPOSED ORDER AMENDING CLASS
12-11	118	LISTS OF CLASS MEMBERS REQUIRED TO BE FILED WITH COURT—Three Volumes—118a, 118b & 118c—Separate Folders

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Civil Docket No. 2660

BEATY MAE GILLIARD; SAMUEL ODELL DAVIS; LORRAINE GILLIARD, LORETTA GILLIARD; THOMAS GILLIARD, DANA GILLIARD, GREGORY GILLIARD, REGINALD GILLIARD, AND SAMUEL DAVIS, JR. GILLIARD, MINORS BY THEIR MOTHER AND NEXT FRIEND, BEATY MAE GILLIARD; ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS.

v.

CLIFTON M. CRAIG, INDIVIDUALLY AND AS NORTH CAROLINA COMMISSIONER OF SOCIAL SERVICES; NORTH CAROLINA BOARD OF SOCIAL SERVICES, A PUBLIC BODY CORPORATE; JOHN R. JORDAN, JR., MRS. THOMAS E. MEDLIN, MRS. NEIL J. GOODNIGHT, DR. BRUCE B. BLACKMON, SARAH AUSTIN, TROY H. THOMPSON AND ROBERT L. LYDAY, INDIVIDUALLY AND AS MEMBERS OF THE NORTH CAROLINA BOARD OF SOCIAL SERVICES; WALLACE H. KURALT, INDIVIDUALLY AND AS MECKLENBURG COUNTY DIRECTOR OF SOCIAL SERVICES; AND MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS

COMPLAINT

[Filed MAY 5, 1970]

JURISDICTION

1. This action arises under Title 42 U.S.C. Section 1983 and is brought to redress the deprivation by Defendants of rights, privileges and immunities secured to Plain-

tiffs by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and by the Social Security Act of 1935, as amended, Title 42 U.S.C. Section 601 et seq., as hereinafter more fully appears. Jurisdiction is conferred on this Court by Title 28 U.S.C. Sections 1343(3) and 1343(4).

2. This is an action for a declaratory judgment brought pursuant to Title 28 U.S.C. Sections 2201 and 2202, for the purpose of determining a question of actual controversy between the parties and declaring illegal and unconstitutional the policies, practices, procedures and regulations complained of herein.

3. This is an action for declaratory and injunctive relief against the enforcement of statewide policies, practices, procedures and regulations, brought pursuant to Title 28 U.S.C. Sections 2281 and 2284 requiring the convening of a three-judge Court.

CLASS ACTION

4. Plaintiffs bring this action on behalf of themselves and all other North Carolina recipients of public assistance pursuant to Title 42 U.S.C. Section 601 et seq. (hereinafter "AFDC recipients") and all other fathers of AFDC recipients who are making support payments for such AFDC recipients (hereinafter "supporting fathers") similarly situated, as hereinafter more fully appears. The said class of AFDC recipients and supporting fathers includes approximately 126,000 members and it is therefore impracticable to bring them all before the Court; there are questions of law and fact presented herein which are common to the entire class of AFDC recipients and supporting fathers and such common questions predominate over any other questions which may arise in this action; the claims of the Plaintiffs are typical of the claims of said class; and the Plaintiffs will fairly and adequately protect the interests of said class.

PARTIES

5. Plaintiff Beaty Mae Gilliard is a citizen of the United States residing in Mecklenburg County, North Carolina; she is the mother of minor Plaintiffs Lorraine Gilliard, age 15, Loretta Gilliard, age 15, Thomas Gilliard, age 12, Dana Gilliard, age 11, Gregory Gilliard, age 9, Reginald Gilliard, age 8, and Samuel Davis, Jr. Gilliard, age 5 months; all minor Plaintiffs currently reside with their mother in Mecklenburg County, North Carolina. Plaintiff Samuel Odell Davis is a citizen of the United States residing in Mecklenburg County, North Carolina; he is the father of minor Plaintiff Samuel Davis, Jr. Gilliard, as hereinafter more fully appears.

6. Defendant Clifton M. Craig is Commissioner of Social Services for North Carolina (hereinafter "State Commissioner") and, in said capacity, has primary responsibility for the administration of public assistance, including the AFDC program, throughout North Carolina. Defendant North Carolina Board of Social Services (hereinafter "State Board") is a corporate governmental agency organized under the Constitution and Laws of North Carolina and authorized thereunder to adopt policies and authorize actions governing the administration of public assistance, including the AFDC program throughout North Carolina. Defendants John R. Jordan, Jr., Mrs. Thomas E. Medlin, Mrs. Neil J. Goodnight, Bruce B. Blackmon, Sarah Austin, Troy H. Thompson, and Robert L. Lyday are the individual members of Defendant State Board and, in the aggregate, compose the total membership of Defendant State Board. Defendant Wallace H. Kuralt is Director of Defendant County Department (hereinafter "County Director") and, in said capacity, has primary responsibility for the administration of public assistance, including the AFDC program throughout Mecklenburg County, North Carolina. Defendant Mecklenburg County Department of Social

Services (hereinafter "County Department") is a corporate governmental agency organized under the Constitution and Laws of North Carolina and authorized thereunder to administer public assistance, including the AFDC program, throughout Mecklenburg County, North Carolina.

STATEMENT OF CLAIM

7. Plaintiff Beaty Mae Gilliard and minor Plaintiffs, her seven children, are currently receiving North Carolina public assistance pursuant to the AFDC program and, on information and belief, Plaintiff Beaty Mae Gilliard has been receiving North Carolina public assistance pursuant to the AFDC program for herself and her children since 1962.

8. At the birth of minor Plaintiff Samuel Davis, Jr. Gilliard in November, 1969, he was automatically included in Plaintiff Beaty Mae Gilliard's AFDC grant, and said child has continued to be included in said AFDC grant from his birth to date, without any application for such inclusion having been made or any consent given by Plaintiff Beaty Mae Gilliard.

9. The automatic and continuing inclusion of minor Plaintiff Samuel Davis, Jr. Gilliard in Plaintiff Beaty Mae Gilliard's AFDC grant, which inclusion has been authorized without any application having been made or without any consent having been given, as set forth in Paragraph 8, has been effected pursuant to policies, practices, procedures and regulations adopted and administered by Defendants.

10. The incremental increase in the total monthly budgetary requirements of Plaintiff Beaty Mae Gilliard and her family, based upon the inclusion of minor Plaintiff Samuel Davis, Jr. Gilliard in the AFDC grant, is

$11.50, as determined pursuant to policies, practices, procedures and regulations adopted and administered by Defendants.

11. Plaintiff Samuel Odell Davis has been pronounced and declared the father of minor Plaintiff Samuel Davis, Jr. Gilliard in an Order signed April 6, 1970 by the duly-authorized Assistant Clerk of the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina pursuant to North Carolina General Statutes Section 49-10.

12. From the birth of minor Plaintiff Samuel Davis, Jr. Gilliard in November, 1969, Plaintiff Samuel Odell Davis has paid regularly an average $43.33 every month for the sole purpose of supporting his son, minor Plaintiff Samuel Davis, Jr. Gilliard.

13. On February 4, 1970 Defendant County Department, pursuant to policies, practices, procedures and regulations adopted and administered by Defendants, found that the total monthly budgetary requirements of Plaintiff Beauty Mae Gilliard and minor Plaintiffs, her seven children, for March, 1970 would be $227.00.

14. On information and belief, were minor Plaintiff Samuel Davis, Jr. Gilliard not included in Plaintiff Beaty Mae Gilliard's AFDC grant, Defendant County Department, pursuant to policies, practices, procedures and regulations adopted and administered by Defendants, would find that the total monthly budgetary requirements for Plaintiff Beaty Mae Gilliard and her six oldest children, minor Plaintiffs were approximately $217.00 and the monthly AFDC payment to said Plaintiffs would be approximately $217.00.

15. On or about March 4, 1970 Plaintiff Beaty Mae Gilliard received a total AFDC payment for March, 1970 of $184.00; on or about April 3, 1970 Plaintiff Beaty Mae Gilliard received a total AFDC payment for April, 1970 of $184.00.

16. On information and belief, Defendant County Department purposefully deducted $43.33 from the total monthly budgetary requirements to calculate the AFDC payments for March and April, 1970 and, on information and belief, such deductions were a direct consequence of a determination by Defendant County Department that the $43.33 average monthly payment by Plaintiff Samuel Odell Davis, as set forth in Paragraph 12, was a resource available to Plaintiff Beaty Mae Gilliard and all seven of her children, minor Plaintiffs, such determination having been made pursuant to policies, practices, procedures and regulations adopted and administered by Defendants.

17. On information and belief, if Plaintiff Samuel Odell Davis continues to make regular support payments for his son, minor Plaintiff Samuel Davis, Jr. Gilliard, Defendant County Department will continue to deduct such payments in calculating monthly AFDC payments to Plaintiff Beaty Mae Gilliard and minor Plaintiffs, her seven children, as described in Paragraph 16, pursuant to policies, practices, procedures and regulations adopted and administered by Defendants.

CAUSES OF ACTION

As a result of the actions taken by Defendants, as set forth in Paragraphs 7-17, Plaintiffs have been and will continue to be deprived of rights, privileges and immunities secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and by the Social Security Act of 1935, as amended, Title 42 U.S.C. Section 601 et seq.

18. The Social Security Act of 1935, as amended, Title 42 U.S.C. Section 601 et seq., establishes the federal-state AFDC income maintenance program designed to facilitate the care of needy dependent children in their own homes or in the homes of relatives in order to strengthen family bonds and to encourage the development of self-

sufficiency and personal independence. North Carolina participates in the AFDC program, which program provides, *inter alia*, that AFDC benefits are payable only to specified needy dependent children and to specified relatives with whom they are living and that, in determining need, resources available to AFDC applicants must be taken into consideration.

19. Defendants have adopted and administered policies, practices, procedures and regulations governing the administration of the AFDC program throughout North Carolina and throughout Mecklenburg County, North Carolina. All such policies, practices, procedures and regulations whose adoption and administration have contributed to the injuries complained of herein shall be questioned in this action; specifically at issue, however, is Section 2321 (I)(B)(8), North Carolina Department of Social Security Manual, Social Services Division, Financial Services, Supplement No. 238 to County Letter No. 55, Rev. 7-1-69, which regulation sets forth the requirement that support payments be deduced as a resource in calculating the monthly AFDC payments.

20. Defendants' automatic inclusion of minor Plaintiff Samuel Davis, Jr. Gilliard in Plaintiff Beaty Mae Gilliard's AFDC grant, as set forth in Paragraph 8, contravenes the federal statutory provision described in Paragraph 18 by authorizing payment of AFDC benefits to a dependent child who is not needy; said automatic inclusion operates to deprive Plaintiff Beaty Mae Gillard, minor Plaintiffs, her children, and Plaintiff Samuel Odel Davis of rights secured by the Due Process and Equal Protection Clausess of the United States Constitution, as hereinafter more fully appears.

21. Defendants' deduction of the support payments made by Plaintiff Samuel Odell Davis for his son, minor Plaintiff Samuel Davis, Jr. Gilliard, in calculating monthly AFDC payments, contravenes the federal statutory pro-

vision described in Paragraph 18 by characterizing such support payments as resources available to Plaintiff Beaty Mae Gilliard and all seven of her children, minor Plaintiffs, when such support payments are made solely for the benefit of minor Plaintiff Samuel Davis, Jr. Gilliard, who is entitled under the Laws of North Carolina to the full benefit of such support payments; said deduction operates to deprive Plaintiff Beaty Mae Gilliard, minor Plaintiffs, her children, and Plaintiff Samuel Odell Davis of rights secured by the Due Process and Equal Protection Clauses of the United States Constitution, as hereinafter more fully appears.

22. Defendants' actions, as set forth in Paragraph 7-17, have operated and will continue to operate in contravention of federal law to deprive Plaintiff Beaty Mae Gilliard and her six oldest children, minor Plaintiffs, of AFDC benefits to which they are entitled, as set forth in Paragraphs 14 and 15, and have consequently operated to significantly impede their development of self-support and personal independence, substantial personal liberties to which said Plaintiffs are entitled under the Constitution and Laws of the United States. Defendants' actions have operated and will continue to operate to deprive said Plaintiffs of these personal liberties in violation of the due Process Clause in that Defendants' actions are patently arbitrary and totally devoid of procedures necessary to protect the interests of said Plaintiffs. Moreover, Defendants' actions have operated and will continue to operate so as to deprive said Plaintiffs of these personal liberties in violation of the Equal Protection Clause in that Defendants' actions arbitrarily and irrationally discriminates between AFDC recipients in grants with an included child received independent support payments for said child's sole benefit from a parent and AFDC recipients in grants with no included child receiving independent support payments from a parent: the former receive monthly AFDC payments cal-

culated by deducting the support payments from the total monthly requirements of the entire family; the latter suffer no such arbitrary deduction.

23. Defendants' action, as set forth in Paragraphs 7-17 and which contravene federal law, as set forth in Paragraphs 19 and 20, have operated and will continue to operate to deprive minor Plaintiff Samuel Davis, Jr. Gilliard of the full benefit of the support payments made for him by his father, Plaintiff Samuel Odell Davis, in that Defendants' actions have, by arbitrarily reducing the monthly AFDC payments to Plaintiff Beaty Mae Gilliard, caused her to divert support payments to meet the requirements of herself and of her six oldest children, minor Plaintiffs, thereby, in violation of the Due Process Clause, arbitrarily depriving minor Plaintiff Samuel Davis, Jr. Gilliard of support payments to which he is legally entitled and of critical personal liberties relative to his development into a mature and productive member of society which personal liberties are dependent upon receipt by him of the full support payments.

Moreover, Defendants' actions, as set forth in Paragraphs 7-17 and as authorized by the North Carolina General Assembly, have operated and will continue to operate to deprive said minor Plaintiff of support payments and the concomitant substantial personal liberties in violation of the Equal Protection Clause in that the North Carolina General Assembly acting through defendants, its duly-authorized agents, has effected an arbitrary and irrational discrimination between children receiving support payments who are included in AFDC grants and children receiving support payments who are not included in AFDC grants: Defendants assume, pursuant to state law, that the former will not receive the full support payments and the consequence of this assumption is a reduction in AFDC payments to the family which causes

the diversion of support payments from the child entitled to them to others included in the AFDC grant; the latter are, pursuant to state law, entitled to the full benefit of support payments, as are the former, but unlike the former, the latter suffer from no arbitrary assumption encouraging diversion of such support payments.

24. Defendants' actions, as set forth in Paragraphs 7-17 and in contravention of federal law as set forth in Paragraphs 19 and 20, have operated and will continue to operate to deprive Plaintiff Samuel Odell Davis of the full benefit of the support payments made by him for his son, minor Plaintiff Samuel Davis, Jr. Gilliard in violation of the Due Process Clause and have operated to create and will continue to operate to enforce a binding obligation upon Plaintiff Samuel Odell Davis to make support payments for children of whom he is not the father in violation of the Due Process Clause. Defendants' actions have, by arbitrarily reducing the monthly AFDC payments to Plaintiff Beaty Mae Gilliard, caused her to divert support payments to meet the requirements of herself and her six oldest children, minor Plaintiffs, thereby depriving Plaintiff Samuel Odell Davis of the substantial intangible benefits and satisfactions naturally derived from supporting the development of one's son into a mature man, in violation of the Due Process Clause, Moreover, Defendants' actions have, by arbitrarily reducing the monthly AFDC payments to Plaintiff Beaty Mae Gilliard, caused her to divert support payments to meet the requirements of herself and her six oldest children, minor Plaintiffs, thereby casing allocation, in violation of the Due Process Clause, of support payments which Plaintiff is, pursuant to state law, legally obligated to make, to children who Plaintiff owes no legal obligation to support. Furthermore, Defendants' actions have operated and will continue to operate to deprive Plaintiff Samuel Odell Davis of

substantial intangible benefits and to create and enforce an unjustifiable, unauthorized obligation in violation of the Equal Protection Clause, in that the North Carolina General Assembly acting through Defendants, its duly authorized agents, has effected an arbitrary and irrational discrimination between fathers supporting children included in an AFDC grant and fathers supporting children not included in an AFDC grant: the former, because of the arbitrary reduction of monthly AFDC payments, have their support payments diverted from their children for the benefit of others; the latter suffer no such diversion of their support payments.

25. The claims set forth in Paragraphs 18-24 are implicity alternative, the apparent inconsistencies arising from the lack of accurate information concerning the present and future disposition of the $43.33 average monthly support payment by Plaintiff Samuel Odell Davis for minor Plaintiff Samuel Davis, Jr. Gilliard.

26. There is an actual controversy now existing between the parties to this action as to which Plaintiff seek the judgment of this Court. Plaintiffs seek a declaration of the legal rights and relationships involved in the subject matter and existing controversy.

27. Plaintiffs, and the class which they represent, will suffer irreparable injury through economic deprivation caused by the administration of the policies, practices, procedures and regulations of Defendants.

28. Plaintiffs, and the class which they represent, have no plain, adequate or speedy remedy at law to redress such injury and will continue to suffer injury unless and until Defendants' policies, practices, procedures and regulations complainted of herein are enjoined; therefore, Plaintiffs bring this action for declaratory and injunctive relief as their only means of securing adequate relief.

WHEREFORE, Plaintiffs, on behalf of themselves and the class which they represent, pray the Court that this case be advanced on the docket and that:

1. A three-judge Court be convened pursuant to Title 28 U.S.C. Sections 2281 and 2284 to hear and determine the issue herein;

2. Pending the convening of said three-judge Court, Defendants be temporarily restrained from deducting support payments made by fathers to AFDC recipients from the total monthly budgetary requirements of AFDC families in calculating monthly AFDC payments to such families;

3. Subsequent to the convening of said three-judge Court, Section 2321(I)(B)(8) of the North Carolina Department of Social Services Manual, Social Services Division, Financial Services, Supplement No. 238 to County Letter No. 55, Rev. 7-1-69, be declared illegal and unconstitutional insofar as said regulation authorizes deduction of support payments made to AFDC recipients in calculating monthly AFDC payments to the entire AFDC family and administration and enforcement of said regulation be preliminarily and permanently enjoined;

4. Subsequent to the convening of said three-judge Court, said Court declare illegal and unconstitutional and preliminarily and permanently enjoin Defendants' actions: (a) including children in AFDC grants automatically, without either application having been made or consent having been given by the head of the AFDC household; (b) including children in AFDC grants who are receiving adequate independent support; and (c) characterizing independent support payments to individual AFDC recipients as resources properly deductible in calculating monthly AFDC payments.

5. Plaintiffs be allowed their costs in this action and that Plaintiffs and the class which they represent be

granted such further relief as the Court deems just and proper.

Respectfully submitted this ____ day of April, 1970.

_____

Gail F. Barber

/s/ THOMAS W. PULLIAM, JR.

Thomas W. Pulliam, Jr.
Attorneys for the Plaintiffs
Legal Aid Society of
Mecklenburg County
1101 Statesville Avenue
Charlotte, North Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA CHARLOTTE DIVISION

Civil Action No. 2660

BEATY MAE GILLIARD; SAMUEL ODELL DAVIS; LORRAINE GILLIARD, LORETTA GILLIARD; THOMAS GILLIARD, DANA GILLIARD, GREGORY GILLIARD, REGINALD GILLIARD, AND SAMUEL DAVIS, JR. GILLIARD, MINORS BY THEIR MOTHER AND NEXT FRIEND, BEATY MAE GILLIARD; ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED.
PLAINTIFFS,

v.

CLIFTON M. CRAIG, INDIVIDUALLY AND AS NORTH CAROLINA COMMISSIONER OF SOCIAL SERVICES: NORTH CAROLINA BOARD OF SOCIAL SERVICES, A PUBLIC BODY CORPORATE; JOHN R. JORDAN, JR., MRS. THOMAS E. MEDLIN, MRS. NEIL J. GOODNIGHT, DR. BRUCE B. BLACKMON, SARAH AUSTIN, TROY H. THOMPSON AND ROBERT L. LYDAY, INDIVIDUALLY AND AS MEMBERS OF THE NORTH CAROLINA BOARD OF SOCIAL SERVICES; WALLACE H. KURALT, INDIVIDUALLY AND AS MECKLENBURG COUNTY DIRECTOR OF SOCIAL SERVICES; AND MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS.

MOTION FOR FURTHER RELIEF

Now come members of the Plaintiff class in this cause and move the Court for further relief and enforcement of the Order entered herein on December 10, 1971.

As grounds therefor, members of the Plaintiff class allege:

1. The movants herein are Dianne Thomas, and her two children Sherrod and Crystal; Mary Medlin and her four children Anthony,

Roderick, Karen and Jermaine; Joyce Miles and her five children DeAngela, Felicia, Larry, Johnetta and Kisha; and Arvis Waters and her five children Allen, Andre, Alice, Bernard and Aaron. Each is a member of the class as defined in the Judgment entered in this action on December 10, 1971, this is, each is a person who has been subjected to reduction, termination or denial of AFDC benefits based upon the unconstitutional or illegal claim of credit by the administering agencies for outside income and other resources available to some, but not all, of the family group. Affidavits of Thomas, Medlin, Miles and Waters persons are attached and incorporated herein by reference.

2. Since the fiing of this action, the North Carolina Department of Human Resources has assumed the functions previously carried out by the North Carolina Board of Social Services. *See* N.C.G.S. § 143B-138. The Social Services Commission of the Department of Human Resources now has the particular power and duty to adopt rules and regulations to be followed in the conduct of the State's social services programs. Phillip J. Kirk is the Secretary of the Department of Human Resources and Dr. C. Barry McCarty is the Chairman of the Social Services Commission. As such, they are the successors-in-interest to the defendants in this action.

3. By virtue of the Judgment entered in this action, the defendants are permanently enjoined from "directly or indirectly reducing, or continuing to reduce, withholding, or continuing to withhold, the payment to AFDC beneficiaries of any funds on the basis of crediting outside income or resources of one or more members of the family

group without first determining that such income is legally available to all members of the family group. The December 10, 1971 Judgment is attached.

4. On October 1, 1984, the defendants resumed conduct which is prohibited by the Judgment, in that they promulgated and implemented regulations known as the "Standard Filing Unit" regulations found primarily at Section 2360 of the AFDC Manual. These regulations require that all the siblings and half-siblings of a dependent child be included in an AFDC application for that dependent child. The result of this inclusion is that all the income of those siblings is considered as available to the whole unit without a determination that such income is legally available to all members of the family group.

5. The instructional materials issued by defendants indicate that the Standard Filing Unit regulations were promulgated as a result of the Deficit Reduction Act of 1984, Public Law 98-369. *See* Change Notice for Manual No. 8-85, attached. Properly interpreted, however, the Deficit Reduction Act does not authorize the defendants to consider the legally restricted income of one child as available to the whole unit, and does not authorize defendants to violate the Judgment herein.

6. Furthermore, the defendants' new regulations violate the Fifth and Fourteenth Amendments of the United States Constitution, in the same manner as was alleged in the Complaint. In addition, the Standard Filing Unit regulations give rise to violations of the "Takings Clause" of the Fifth Amendment, and the Tenth Amendment.

WHEREFORE, movants Thomas, Medlin, Miles and Waters pray the Court to:

1. Enter a further Order in this action invalidating the Standard Filing Unit regulations and reaffirming the original injunction;

2. Order defendants to make full restitution to all class members of AFDC benefits lost as a result of the implementation of the Standard Filing Unit regulations;

3. Award attorneys' fee to Plaintiff's Counsel;

4. Enter such other relief as to the Court seems proper.

This the 30th day of May, 1985.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

Civil Action No. 2660

BEATY MAE GILLIARD; SAMUEL ODELL DAVIS; LORRAINE GILLIARD, LORETTA GILLIARD; THOMAS GILIARD, DANA GILLIARD, GREGORY GILLIARD, REGINALD GILLIARD, AND SAMUEL DAVIS, JR. GILLIARD, MINORS BY THEIR MOTHER AND NEXT FRIEND, BEATY MAE GILLIARD; ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED. PLAINTIFFS,

v.

CLIFTON M. CRAIG, INDIVIDUALLY AND AS NORTH CAROLINA COMMISSIONER OF SOCIAL SERVICES, NORTH CAROLINA BOARD OF SOCIAL SERVICES, A PUBLIC BODY CORPORATE; JOHN R. JORDAN, JR., MRS. THOMAS E. MEDLIN, MRS. NEIL J. GOODNIGHT, DR. BRUCE B. BLACKMON, SARAH AUSTIN, TROY H. THOMPSON AND ROBERT L. LYDAY, INDIVIDUALLY AND AS MEMBERS OF THE NORTH CAROLINA BOARD OF SOCIAL SERVICES; WALLACE H. KURALT, INDIVIDUALLY AND AS MECKLENBURG COUNTY DIRECTOR OF SOCIAL SERVICES; AND MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS.

JUDGMENT

This cause having come on for hearing on the 5th day of November 1970, and the 21st day of May, 1971, and the Court having found that Aid to Families with Dependent Children (AFDC) benefits have been wrongfully withheld by the Defendants from the Plaintiffs and the members of

the class which they represent, it is Ordered, Adjudged and Decreed as follows:

INDIVIDUAL RELIEF

1. That the Defendants, their officers, agents, servants and employees, and those persons acting under, or in concert with them, be and they hereby are permanently restrained and enjoined from directly or indirectly:

   A. Including, or continuing to include, as family resources, support payments belonging individually to Samuel Davis, Jr.

   B. Withholding, or continuing to withhold, reducing, or continuing to reduce, the payment of AFDC benefits from the members of the Gilliard family, because of the presumed availability to the family group of support payments available only to Samuel Davis, Jr.

2. That the Defendant, its officers, agents and employees restore to Plaintiff Beaty Mae Gilliard payments of $217.00 per month retroactive to March, 1970, at the rate of $43.00 per month.

CLASS RELIEF

2. *Definition of the class.* For purposes of relief, the class is defined as all those persons who have been or may be subject to reduction, termination or denial of AFDC benefits based upon the unconstitutional or illegal claim of credit by administering agencies for outside income and other resources available to some, but not all, of the family group.

3. *Prospective Relief.* It is further Ordered, Adjudged, and Decreed that the Defendants, their officers, agents, servants, employees, and those persons acting under or in concert or participation with them,

be, and they hereby are restrained and enjoined from directly or indirectly reducing, or continuing to reduce, withholding, or continuing to withhold, the payment to AFDC beneficiaries of any funds on the basis of crediting outside income or resources of one or more members of the family group without first determining that such income is legally available to all members of the family group.

4. *Retroactive Relief.* It is further Ordered, Adjudged, and Decreed that the Defendants shall pay to the members of the class benefits which they would have received but for the unlawful reduction, termination, or denial dating from March, 1970, the date of the final administrative action by the commissioner in the named Plaintiffs' case.

5. *Procedure for Determination of the Class.* It is further Ordered, Adjudged, and Decreed that the North Carolina Department of Social Services shall file with the Court and provide a copy to counsel for the Plaintiffs the following lists:

A. The names and addresses of all those persons deemed by the Defendant to be owed money under the terms of the judgment, indicating the amount of money owed and the reason for payment.

B. The names and addresses of all those persons to whom benefits have been denied, reduced or terminated since March, 1970, because of income deemed available to all members of the family group, but which, under the terms of the judgment was available to some, but not all, of the family group. This list shall specify as to each recipient the kind of action taken, the reason for the action, the effective date of the action, and the amount of money involved.

6. *Procedure for Notification of the Class.* It is further Ordered, Adjudged, and Decreed that the North Carolina Department of Social Services, its officers, employees or agents, shall, on or before Sixty Days (60) from the date of this Judgment, notify all AFDC recipients of this Judgment. The notice shall be in the form of the letter attached to this Judgment, an Exhibit "A" and shall explain the terms of the judgment in simple language. The notice shall include the provision that if the recipient feels that he or she has a right to reimbursement, he or she has a right to appeal for those payments retroactive to March, 1970, within Sixty Days (60) of the date of the notice. The notice shall also include a form returnable to the North Carolina Department of Social Services on which such claimants may indicate their desire to appeal.

7. It is further Ordered, Adjudged, and Decreed that the North Carolina Department of Social Services, its officers, agents, and employees, shall, upon receipt of such appeal, in accordance with this Judgment, and the applicable federal and state regulations, determine the entitlement of each such appellant to the restoration of payments retroactive to March, 1970, or the date of the original determination.

Dated: December 10, 1971.

/s/ JAMES B. MCMILLER

James B. McMiller
United States District Judge
For the Court

EXHIBIT "A"

TO: ***All AFDC Recipients***

In June of this year the Federal District Court in Charlotte decided a case which may give you the right to increased benefits.

The Court decided that the Department of Social Service could not reduce the grant of an AFDC recipient with 7 children who was receiving support from the father of the seventh child who was not the father of any of the other children. The reason the Department of Social Services had reduced the grant was that it was counting the support payments as a general resources available to the whole family, when legally the recipient had to apply it only to the child who was entitled to it.

This decision may affect people who have outside income (such as support payments) which has been credited by the Department of Social Services to reduce, deny, or terminate a welfare check to AFDC beneficiaries.

If you have outside payments made to you which legally are to be used for less than all members of your family and the Department of Social Services has counted the money as being available to all members of the family, then the Department of Social Service will make over your budget so that the outside money will be counted as income only for those members of your family who are legally entitled to receive it.

If you have any questions about this letter or whether you come within this group, contact your caseworker or the nearest Legal Aid office.

If you think you have had your payments reduced, terminated or denied at any time since March, 1970, because the Department of Social Services has counted income which it should not have counted fill in the enclosed appeal form and return it to your local Department of Social

Services. If you have any questions as to whether you come within this group, contact Gail Barber, Legal Aid Society of Mecklenburg County, 1101 Statesville Avenue, Charlotte, North Carolina 28206, (704) 376-6591.

DSS-2198 (8/76)

CHANGE NOTICE FOR MANUAL

DATE September 13, 1984

MANUAL Aid to Families with Dependent Children (AFDC)

CHANGE NO. 8-85

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

EFFECTIVE October 1, 1894 MAKE THE FOLLOWING CHANGE(S) TO AFDC MANUAL.

AFDC-2360 is revised effective October 1, 1984 to incorporate revised regulations resulting from the Deficit Reduction Act of 1984, Public Law 98-369, and from the 10% increase in AFDC benefits approved by the General Assembly. Primarily, the revisions are as follows:

1. Change in the 150% rule. To determine initial eligibility, the assistance unit's gross income will be compared to 185% of the Need Standard.
2. Inclusion of definition of Standard Filing Unit. Except in certain instances, a parent and all minor children who are brothers and sisters and who are living together must be included in the same assistance unit.
3. Modifications to what income is counted in the 185% rule. Up to $50 will be subtracted from child support payments. In certain situations, deemed income from a parent or legal guardian to a minor mother will be counted.
4. Changes in budgeting procedures for when a minor mother lives with a parent.
5. Addition of budgeting procedures for when a minor mother lives with a legal guardian.

6. Inclusion of revised tables to reflect the 10% increase in AFDC benefits and the 185% of Need Standard.

Remove AFDC-2360 and Tables 1-5. Insert the attached section and tables.

If you have questions, please call your Income Maintenance Representative.

/s/ BONNIE M. CRAMER
Bonnie M. Cramer
Assistant Director for
Program Administration

KCF/JBS/1d
Attachment

References: 45 CFR 206.10; 45 CFR 232.20 and 233.20 (a)(4);
45 CFR 233.20 (a)(3)(xiii); 45 CFR 233.20 (a)(3)(xviii);
House Bill No. 80

North Carolina Department of Human Resources
Division of Social Services
Assistance Payments Section
AFDC Manual AFDC-2360

Transmitted by Change No. 8-85

Need Rev. 10-1-84

I. Eligibility Requirement

To determine if the assistance unit is in need, apply the 185% rule to the Need Standard. (See V. below.) If the assistance unit does not meet this initial test of eligibility, deny or terminate assistance. If the assistance unit does meet the 185% rule, calculate the payment by subtracting countable net income from the Payment Standard. If there is a deficit, the assistance unit is in need.

II. Definitions

A. Need Standard – The amount of money the State determines to meet a minimal standard of living for a family of a specified size (Table 1). Always use the Need Standard or the Individual Need Standard to determine:

1. Initial eligibility (185%) rule. (Table 3)
2. Needs of a parent who is excluded from the assistance unit because he does not meet one or more of the eligibility requirements. (Table 2)
3. Needs of a parent(s) and others living in the home when deeming income to a minor mother. See AFDC-2350. (Table 1)
4. Needs of a stepparent and other persons living in the home when deeming income from a stepparent. See AFDC-2350. (Table 1)

5. Needs of an individual sponsor, his/her spouse, and other persons when deeming income to a non-exempt alien. See AFDC-2350. (Table 1)
6. Dependents' need for work release. See AFDC-2350. (Table 1)
7. Eligibility for the $30 and ⅓ disregard for an applicant who has not received in one of the four months prior to the month of application. (Table 1)

B. Payment Standard – The amount (50% of the Need Standard) from which to subtract countable net income to calculate the payment (Table 4)

C. Budget Unit – All those for whom application has been made plus anyone in the home who is liable for the support of a member of the assistance unit or whose income is counted as available to the assistance unit. That is, parent for child, spouse for spouse, stepparent or individual sponsor for the assistance unit.

D. Assistance Unit – The total number of applicants/recipients whose needs are considered in determining the payment amount.

III. Standard Filing Unit

A. The parent and all minor children who are brothers and sisters, including half brothers and sisters, and who are living together must be included in the same assistance unit unless:

1. The parent or child is an SSI recipient, or

2. The parent or child does not meet all eligibility factors with the exception of income and reserve. Do not exclude a parent or child because of the amount of income or reserve he has.

This rule applies when a minor mother receives adoption assistance (IV-E), and her adoptive parent or the minor mother applies for AFDC for a dependent child. The minor mother must be included in the assistance unit unless she meets the exception above.

A parent or child who was determined ineligible due to receipt of a lump sum payment while he was a member of another assitance unit cannot be included in the assistance unit until the period of ineligibility ends.

B. The applicant may choose to apply for a stepchild; however, a stepchild is not required to be in the assistance unit. Explain the advantages and disadvantages of the choice.

IV. Who Is In The Assistance Unit:

A. Parent—Count him in the assistance unit unless he:

1. Receives SSI.
2. Does not meet all eligibility factors with the exception of income and reserve. Do not exclude a parent or child because of the amount of income or reserve he has.

B. Minor Mother

1. Minor mother living with a parent(s) who receives AFDC – Minor mother and her child must be included in the assistance unit with her mother unless:
   a. She receives SSI.
   b. She does not meet all eligiblity factors with the exception of income and reserve. Do not exclude a parent or child because of the amount of income or reserve he has.
2. Minor mother living alone or with a parent(s) who does not receive AFDC, or with a specified relative other than a parent – Include the minor mother as payee in her own assistance unit unless:
   a. She receives SSI.
   b. She does not meet all eligibility factors with the exception of income and reserve. Do not exclude a parent or child because of the amount of income or reserve he has.

C. Stepparent – Do not count him in the assistance unit unless the parent is incapacitated.

D. Specified Relative Other Than Parent – Count him in the assistant unit unless he:

1. Receives SSI.
2. Does not meet the eligiblity requirements.
3. Does not want assistance.

E. Spouse of a Specified Relative Other Than a Parent—Do not count the spouse in the assistance unit unless he:

1. Chooses to apply for or be included in the payment, *and*
2. Meets the requirements for an essential person outlined in AFDC-2100.

F. Child—Include each minor brother and sister, including half brother and half sister, in the assistance unit unless:

1. He receives SSI.
2. He does not meet the eligiblity requirements.

G. Essential Person—Count him in the assistance unit if he:

1. Chooses to apply for or be included in the payment, *and*
2. Meets the requirements for an essential person outlined in AFDC-2100.

V. 185% Rule

If the gross income of the assistance unit exceeds 185% of the Need Standard (Table 3) for the number of persons in the assistance unit, deny or terminate assistance.

If the gross income of the assistance unit equals or is less than 185% of the Need Standard (Table 3) for the number of persons in the assistance unit, proceed to VI.

NOTE: Apply the 185% rule at the time of application, review, or change in situation. Never apply the 185% rule to a lump sum during the period of ineligibility. However, do apply the 185% rule to income remaining from a lump sum in the first month of eligibility. See AFDC-2350.

A. What Income is Counted in the 185% Rule?

1. All countable gross earned and unearned income listed in AFDC-2350 for each assistance unit member. To calculate the gross income, use the same base periods as required in AFDC-2350.

   If an assistance unit receives direct child support, verify whether additional child support was also paid through IV-D. See 3. below.

   If so and the verified amount paid toward the IV-D obligation is $50 or more, count the entire amount of the direct child support received. If the verified amount paid toward the IV-D obligation is less than $50, subtract the amount paid from $50. Disregard the difference from the direct child support to determine countable income.

   If no child support is routed through IV-D Accounting for the assistance unit, disregard up to $50 of the direct child support received.

2. All countable gross earned income of a child in the assistance unit after the six month

disregard period for a full-time student. Use the same base period for computing gross income as required in AFDC-2350.

NOTE: Count a child's income after the six months disregard period, without regard to his student status, in the 185% rule with one exception. Do not count income paid to a child a/r who is participating in JTPA.

3. Child Support Routed Through IV-D Accounting – Verify the child support paid for the base period which is the second month prior to the payment month. Subtract $50 or the entire amount if less than $50 from the amount of child support paid for the 185% rule. Do not count arrearage payments.

   To verify the child support paid, use the report from the clerk of court's office or contact that office.

4. Deemed income from a stepparent unless he receives SSI or is in another assistance unit.

5. Deemed income from a parent to a minor mother unless the parent receives SSI.

6. Deemed income from a legal guardian to a minor mother unless the legal guardian receives SSI or is in another assistance unit.

7. Deemed income from a parent who is excluded from the assistance unit to a child unless the parent receives SSI.

B. Child care expenses paid by an a/r to a person in the assistance unit is not considered income to the assistance unit. Therefore, it is not counted as income when applying the 185% rule.

C. Do not count the AFDC payment.

VI. Calculating the Payment

To calculate the payment for applications and ongoing cases, you must:

A. Compute countable net income for the assistance unit according to the regulations in AFDC-2350, and

B. Subtract the countable net income from the Payment Standard (Table 4) for the number in the assistance unit. If the difference is $10.00 or more, authorize a payment rounded down to the lowest dollar. If the difference is $.01 to $9.99, authorize AFDC at $0 payment.

VII. Special Budgeting Procedures

A. Ineligible Parent Who is Excluded from the Assistance Unit and Whose Needs are Not Considered in Calculating a Stepparent's Income

* * * * *

NEED STANDARD BY NUMBER IN THE BUDGET/ASSISTANCE UNIT

Number in Budget/ Assistance Unit	1	2	3	4	5	6	7
Need Standard	$296	388	446	488	534	576	616

Number in Budget/ Assistance Unit	8	9	10	11	12	13	14
Need Standard	$642	670	708	740	778	816	854

For *each person* in the budget/assistance unit in excess of 14, add $38 to the Need Standard for 14.

TABLE 1

INDIVIDUAL NEED STANDARD FOR NUMBER IN THE BUDGET/ASSISTANCE UNIT

Number in Budget/ Assistance Unit	1	2	3	4	5	6	7	8	9	10
Individual's Needs	$296	194	149	122	107	96	88	80	74	71

If there are more than 10 individuals, determine the individual's needs by dividing the Need Standard by the total number of people in the budget/assistance unit and round to the nearest dollar.

TABLE 2

185% OF NEED STANDARD

Number in Assistance Unit	1	2	3	4	5	6	7
185% of Need	$548	718	825	903	988	1,066	1,140

Number in Assistance Unit	8	9	10	11	12	13	14
185% of Need	$1,188	1,240	1,310	1,369	1,439	1,510	1,580

If dependents exceed 14, add $70 for each person in excess of 14.

Table 3

PAYMENT STANDARD BY NUMBER IN THE ASSISTANCE UNIT

Number in Assistance Unit	1	2	3	4	5	6	7
Payment Standard Allowance	$148	194	223	244	267	288	308

Number in Assistance Unit	8	9	10	11	12	13	14
Payment Standard Allowance	$321	335	354	370	389	408	427

For each person in the assistance unit in excess of 14, add $19 to the payment standard allowance for 14.

Table 4

FOOD ALLOWANCE FOR ASSISTANCE UNIT MEMBER TEMPORARILY ABSENT FROM HOME

Number in Assistance Unit	1	2	3	4	5	6	7
Food Allowance Per Person	$76	70	66	63	60	60	57

Number in Assistance Unit	8	9	10	11	12	13	14 & Over
Food Allowance Per Person	$57	57	57	57	57	57	57

Table 5

NORTH CAROLINA)
) **AFFIDAVIT**
WAKE COUNTY)

I, Dianne Thomas, being duly sworn, do depose and say:

1. I live at 914 E. Lane Street, Raleigh, North Carolina.

2. I have two children: Crystal, age 9, and Sherrod, age 7.

3. I am 32 years old. Although I look constantly, I have been unable to find gainful employment.

4. James Edward Shaw is the father of Crystal. By virtue of a Wake County Court Order, 78 CVD 5056, Mr. Shaw is required to pay $20 a week toward Crystal's support. He almost never complies with the Order, however, and Crystal has been on public assistance for her whole life.

5. John Pennington is the father of Sherrod. Although there is no civil court order requiring him to do so, Mr. Pennington has regularly paid $200 a month in child support for Sherrod.

6. Prior to October, 1984, I received an AFDC grant for myself and my daughter Crystal in the amount of $194.

7. On October 15, 1984, I received a letter notifying me that if I did not reapply for AFDC and include my son Sherrod in the application, the AFDC for Crystal would be terminated.

8. I did not reapply for AFDC and my assistance was terminated. The reason I did not reapply is that Sherrod's father had on an earlier occasion threatened to harm me physically if I put his son on welfare. He also threatened to attempt to obtain custody of Sherrod.

9. I asked for a fair hearing to challenge the termination of AFDC. The state hearing officer upheld the decision of the county to terminate my AFDC.

10. Because I had no money with which to support Crystal, I finally reapplied for benefits in February, 1985. I included Sherrod on the application as I was required to do, and signed an assignment of Sherrod's support rights to the state.

11. As of April 11, 1985, John Pennington began to withhold the child support for Sherrod. He informed me that as long as I was going to use Sherrod's support money to keep up my daughter Crystal, he would continue to withhold the support.

12. Because I was receiving $200 a month for Sherrod, my AFDC grant was reduced to $73 a month. I could not support Crystal on this amount, so I was forced to use some of Sherrod's support to meet Crystal's needs.

Since my AFDC was terminated in November, 1984, I have been unable to purchase clothing and other necessary items for my children. Our phone service was disconnected in December because I could not pay the bill. I currently have overdue accounts for lights, and gas.

14. Because I have been unable to support both children, members of my family have been providing some assistance. They have their own families and obligations, however, and cannot continue supporting me on an indefinite basis.

This the 2nd day of May, 1985.

/s/ DIANE THOMAS
Dianne Thomas

SWORN TO and subscribed before me this 2nd day of May, 1985.

/s/ GERALDINE B. SADEN
NOTARY PUBLIC

My Commission Expires: August 20, 1985

Attachments:
1. Notice Regarding Standard Filing Unit.
2. Notice of Administrative Decision.

NORTH CAROLINA)
) **AFFIDAVIT**
WAKE COUNTY)

I, Mary Medlin, being duly sworn, do depose and say:

1. I live at 952 Lipscomb Court, Raleigh, North Carolina.

2. I have four children: Anthony Medlin, age 14; Roderick Medlin, age 13; Karen Medlin, age 10 and Jermaine Medlin, age 1.

3. I am 30 years old. I have been unable to find a full or part-time job, and thus do not have any earned income.

4. John Sanders is the father of Anthony Medlin and Roderick Medlin. His paternity has never been legally established and he has never supported Anthony or Roderick.

5. Bobby Harrington is the father of Karen Medlin. On January 4, 1980, he signed a Voluntary Support Agreement in Wake County 80 CVD 0053, agreeing to pay $39 a week. During early 1984, he regularly paid about $320 every three months. On August 20, 1984, the court ordered that he pay $200 a month, with $40 a month assigned to arrearages which had built up and $160 a month to current support. He began paying $200 a month in September, 1984.

6. James Richardson is the father of Jermaine. Since Jermaine was born, Mr. Richardson has provided direct support to his son, purchasing clothing and diapers, contributing to my household bills and paying me $50 cash as child support. A criminal action for support in Wake County, 85 CR 10961 is currently pending against him, because he has refused to sign a voluntary support agreement.

7. Prior to October, 1984, I received AFDC for myself and my two older children, in the amount of $223.

8. After October 1, 1984, I was informed by the Wake County Department of Social Services that my AFDC grant would be terminated unless I added Karen and Jermaine to the application.

9. Although I did not want to put Karen or Jermaine on AFDC, I did apply for them because it was the only way I could receive any income for myself and my other two children.

10. After I applied with everyone on the application, my whole grant was terminated. The Department of Social Services informed me that because I received $200 in child support for Karen and $50 in child support for Jermaine, my whole family was ineligible.

11. When I added the two younger children to the AFDC application, I was required to sign an Assignment of Rights to Support form (DSS-1201) on their behalf. This assigned their support to the North Carolina Department of Human Resources.

12. Because both Bobby Harrington (Karen's father) and I objected to the state taking Karen's child support money, I agreed to relinquish custody of Karen to her father. She is, therefore, no longer on my AFDC grant. I signed a Consent Agreement allowing him to suspend his support payments.

13. After I let Karen go live with her father, I reapplied for AFDC for Anthony, Roderick and Jermaine. My current grant amount is $215 per month. This is the grant for four persons—$244—reduced by $29 per month because Anthony is temporarily out of the home. I also receive $50 per month for Jermaine's support from James Richardson, which I am allowed to keep because of the "$50 disregard."

This the 3rd day of May, 1985.

/s/ MARY MEDLIN

Mary Medlin

SWORN TO and subscribed before me
this 3rd day of May, 1985

/s/ GERALDINE B. SANDERS

Notary Public

My Commission Expires: August 20, 1985

Attachments:

1. Child Support Order regarding Karen Medlin.
2. Consent Order regarding Suspension of Karen's Support.
3. Assignment of Rights to Support regarding Jermaine Medlin.

NORTH CAROLINA)
) **AFFIDAVIT**
WAKE COUNTY)

I, Joyce Miles, being duly sworn, do depose and say:

1. I live at 1338 Branch Street in Raleigh, North Carolina.

2. Living with me there are my five children: DeAngela Allen, age 17; Felicia Allen, age 14; Larry Miles, age 10; Johnetta Miles, age 6; and Kisha Miles, age 5.

3. I am 34 years old. Although I have been looking for work, I do not have a full or part-time job for which I earn wages.

4. The father of my two younger children is John Brown. No legal paternity determination was ever made with regard to him and he has never been ordered to pay support. He has never supported these two children.

5. The father of Larry Miles, Jr. is Larry Miles. He was originally ordered to pay support pursuant to Wake County 76 CR 64672. As of October 31, 1983 he was $4,803 in arrears. On July 18, 1984, he signed a Voluntary Support Agreement and Order in Wake County, 84 CVD 4576 to pay $108 per month toward current support and $22 a month toward the arrearages.

6. The father of the two oldest children is Arthur Allen. Pursuant to Wake County 83 CVD 3122, he regularly pays child support of $189 per month for his children.

7. Prior to October, 1984, I was receiving AFDC in the amount of $244 per month for myself and my three younger children. The two older children were receiving $189 per month child support from their father.

8. After October, 1984, the Wake County Department of Social Services required me to add my two older

children to the AFDC application. I was informed that my entire grant would be terminated unless I reapplied and included all the children.

9. Although I did not want to put my two older children on AFDC, because they are adequately supported, I did so because it was the only way I could receive any income for myself and the three younger children.

10. When I added the two older children to the AFDC application, I was required to sign an Assignment of Rights to Support form (DSS 1201—attached) on their behalf. This assigned their support to the North Carolina Department of Human Resources.

11. Because of this Assignment, my older children do not receive the $189 child support they are entitled to receive from their father. It is diverted by the Clerk of Court to the Department of Human Resources.

12. With myself and the three younger children on the AFDC grant, my payment was $244 a month. With all five children on the grant, my payment is $288 a month. (I am currently receiving only $278 per month because the Department of Social Services is collecting an overpayment.) I also receive a $50 monthly check, called the child support disregard.

13. Because of the loss of most of the child support, I have been unable to provide for the two oldest girls as I was able to before. I have been unable to purchase such things as class rings, shoes and clothing.

This the 7th day of May 1985.

/s/ JOYCE H. MILES

Joyce H. Miles

SWORN TO and subscribed before me
this 2th day of May, 1985

/s/ GERALDINE B. SANDERS

Notary Public

My Commission Expires: August 20, 1985

Attachments:

1. Support Order regarding Felicia and DeAngela Allen.
2. Support Order regarding Larry Miles, Jr.
3. Assignment of Support Rights of Felicia and DeAngela.
4. Assignment of Support Rights of Larry, Johnetta and Kisha.

NORTH CAROLINA)
) **AFFIDAVIT**
WAKE COUNTY)

I, Arvis Waters, being duly sworn, do depose and say:

1. I live at 2507-63 S. Roxboro Street in Durham, North Carolina.

2. Living with me there are my five children: Allen Waters, Jr., age 10; Andre Waters, age 8; Alise Waters, age 7; Bernard Williams, Jr., age 2; and Aaron Williams, age 1.

3. I am 29 years old. I attend school full-time at North Carolina Central University, participate in a work-study program and take care of my children. As a result, I do not have a full or part-time job for which I earn income.

4. The father of my three oldest children is Allen Waters. He pays no support for his children. Because of his extremely violent behavior, I have been exempted from the requirement that I assist the Department of Social Services in obtaining support from him.

5. The father of the two youngest children is Bernard Williams. He regularly pays child support of $45 per week for this children. He pays this support pursuant to an Order of the Family Court of the State of New York, County of Bronx, docket number P-78667/83, dated March 23, 1984.

6. Due to my lack of income or child support for the three oldest children, I applied for AFDC benefits for myself and three oldest childen in August, 1984. Before the application was completed however, I was informed by my eligibility worker at the Durham County Department of Social Services that my two youngest children must also be included in the AFDC application.

7. Although I did not want to put my two youngest children on AFDC, because they are adequately supported, I did so because it was the only way I could receive any income for myself or the three oldest children.

8. When I added the two youngest children to the AFDC application, I was required to sign an Assignment of Rights to Support form (DSS 1201—attached) on their behalf. This assigned their support to the North Carolina Department of Human Resources.

9. Because of this Assignment, my youngest children do not receive the $45 weekly child support they are entitled to receive from their father. It is diverted by the Clerk of Court to the Department of Human Resources.

10. With myself and the three oldest children on the AFDC grant, my payment would have been $244 a month. With all five children on the grant, my payment is $288 a month. Although I am entitled to receive a $50 monthly check, called the child support disregard, I have not been receiving this.

11. I appealed the decision requiring me to add my two youngest children to the AFDC grant and sign an assignment of their child support at a State Administrative hearing. On February 21, 1985, I received a Notice of Decision which upheld the County Department's decision that I must include my youngest two children in the AFDC application and assign their support to the state.

12. Due to only receiving a total of $288 per month for me and my five children to live on, I am not able to provide my children with many of the things I would like to. For example, I can never buy my children new clothes and even though I keep my children clean, they often aren't dressed the way I would like or the way other children at day care are. Also, there is no money left after necessary bills are paid and therefore I can never buy any toys or special things for them like other children in the neighborhood have. Next week is the birthday of one of my children and I cannot even afford a birthday present. If I got the support money for my two younger children, I would be able to at least buy a few things for them other

than absolute necessities and then they wouldn't feel so left out. Also, my youngest children need a car seat and a high chair and I cannot afford to buy either.

This the 9th day of May, 1985.

/s/ ARVIS WATERS
Arvis Waters

SWORN TO and subscribed before me
this 9th day of May, 1985

/s/ WARNELLA A. WILEY
Notary Public

My Commission Expires: October 10, 1988

Attachments:
1. Support Order regarding Bernard and Aaron Williams.
2. Assignment of Support Rights of Bernard and Aaron.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS,

v.

PHILLIP J. KIRK, SECRETARY, THE DEPARTMENT OF HUMAN RESOURCES IN HIS OFFICIAL CAPACITY AND C. BARRY MCCARTY, CHAIRMAN, SOCIAL SERVICES COMMISSION, IN HIS OFFICIAL CAPACITY, DEFENDANTS,

v.

MARGARET HECKLER, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES IN HER OFFICIAL CAPACITY, THIRD PARTY DEFENDANT.

THIRD-PARTY COMPLAINT

PRELIMINARY STATEMENT

In this action the movants, members of the plaintiff class, seek an order precluding the defendants from including child support income received from the parent of a sibling from being utilized to determined the eligibility of all family members to receive AFDC. At issue is whether movants are eligible for AFDC pursuant to Title IV-A of the Social Security Act, 42 U.S.C. § 601, *et seq*, and accompanying federal regulations. The movants allege that child support income, pursuant to prior ruling in this case, may not be considered income available for the family and that, properly interpreted, 42 U.S.C. § 602(a)(38) is consistent with this position. Further, they allege, that should this not be so, that 42 U.S.C. § 602(a)(38) is unconstitu-

tional. The defendants defend by asserting that 42 U.S.C. § 602(a)(38) has modified the prior decision of this court in that any income, including child support, must be counted to determine AFDC eligibility and that such an interpretation is constitutionally and statutorily permitted. Further, the defendants are required by the interim regulations of the third-party defendant, the federal official who administer the AFDC program, to include the parent and related siblings living in the household in the assistance unit and to include any income of or available to one member of that unit, including child support, in determining eligibility. North Carolina must follow the federal interpretation or it risks incurring the financial actions of federal nonparticipation in payments that federal officials determine to be incorrectly awarded. Accordingly, the third-party defendant has caused the defendants to apply the standard filing unit. Therefore, if this rule is illegal the defendants must provide AFDC to the plaintiffs and the third party defendant is liable to the defendants for part of the movants claims against defendants.

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1334(3) and 28 U.S.C. § 1334(4). Declaratory relief and injunctive are authorized pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202. A third-party complaint is permitted.

PARTIES

2. The movants are Dianne Thomas, and her two children Sherrod and Crystal; Mary Medlin and her four children Anthony, Roderick, Karen and Jermaine; Joyce Miles and her five children DeAngela, Felicia, Larry, Johnetta and Kisha; and Arvis Waters and her five children Allen, Andre, Alice, Bernard and Aaron. A copy of their motion is attached hereto as Exhibit A.

3. Defendant Philip J. Kirk is the Secretary of the North Carolina Department of Human Resources and, as such, is the successor in interest to the former defendants in this action. He is responsible for administering the Aid for Families with Dependent Children program throughout North Carolina in conformity with the Social Security Act and implementing regulations.

4. Defendant C. Barry McCarty is Chairman of the Social Services Commission which is responsible for promulgating regulations for implementing social services program. He is the successor in interest to the former defendants.

5. Third party defendant Margaret Heckler is the Secretary of the United States Department of Health and Human Services. She is responsible for administering the AFDC program in North Carolina and throughout the country in conformity with the Social Security Act. She is responsible for directing and instructing state officials concerning the proper construction and implementation of the Social Security Act and the federal AFDC regulations.

6. The third-party defendant is directly responsible for the defendants's actions which are the subject of the plaintiffs' complaint.

7. The third-party defendant has acted under color of law at all times material to this action.

STATUTES AND REGULATIONS

8. AFDC is a joint federal and state public assistance program established by Title IV-A of the Social Security Act, 42 U.S.C. § 601, *et seq.* North Carolina participates in AFDC.

9. AFDC is available to financially assist families with dependent children. In order to receive AFDC the family's resources must be examined to determine financial

eligibility. The plaintiffs allege that because of the standard filing unit they were incorrectly terminated or denied benefits that they were entitled to receive.

10. Although each state can determine the standard of need and payment amount for each assistance unit, each state must follow the rules of the Aid to Families with Dependent Children Program in determining eligibility for the AFDC program. 42 U.S.C. § 601, *et seq.*

11. AFDC regulations require that the parent and all minor children who are brothers and sisters and who live together must be included in the same assistance unit and further, that any income of or available for any of the above must be included in making the eligibility determination. This rule is called the standard filing unit (SFU). 42 U.S.C. § 602(a)(38); 45 CFR § 206.10.

12. In June 1971 North Carolina's AFDC program employed a different method of determining eligibility. Then, and until October 1, 1984, parents were permitted to opt not to include a sibling in an assistance unit, and child support income was not included to determine financial eligibility unless and until said child was actually included in the budget unit.

FACTS

13. Prior to October 1, 1984, the third-party defendant issued interim regulations and caused to be communicated to the defendants information that, as a result of the adoption of the Deficit Reduction Act (DEFRA), the parent and all siblings who live together must be included in the same assistance unit and that any income, including child support payments, of or available for any of the above must be included in making the eligibility determination. The third-party defendant relied on 42 U.S.C. § 602(a)(38) to support its instruction.

14. North Carolina cannot decline to follow the third-party defendant's direction concerning the proper operation of the AFDC program. If North Carolina does so, the third-party defendant may disallow the federal financial share of payments to AFDC recipients who do not qualify under the third-party defendant's construction of Social Security Act and its regulations. The federal share of these payments is approximately 68%.

15. The movant class members have moved in this case to enjoin defendants from including the parents and all children living in the household in the assistance unit and from including income received from the legally obligated parent of one of the children in determining financial eligibility for the rest of the family members. Further, movants, in the alternative, seek to have the standard filing unit statute and regulations declared unconstitutional.

16. The defendants have been informed by the third-party defendant that HHS would not fully participate in any payments which the State of North Carolina may be required to make on account of the Court's order in this case.

17. The defendants are at present in compliance with federal regulations with respect to plaintiffs eligibility for AFDC. However, should this court order preliminary or permanent relief for the plaintiffs, the court should specifically declare the responsibilities of the state and federal agencies and should order the third party defendant to provide whatever funds may be necessary to meet her responsibilities to the plaintiffs and defendants.

COUNT ONE:
DECLARATORY RELIEF

18. An actual and present controversy exists between the defendants and third-party defendants in that the

defendants are exposed to multiple and conflicting liability because of the third-party defendant's interim regulations and instructions concerning the standard filing unit and 42 U.S.C. § 602(a)(38) differ from the movants construction of 42 U.S.C. § 602(a)(38). The third-party defendant is liable to the defendants for approximately 68% of defendants' AFDC payments, but will not participate in payments ordered by the court. The defendants are entitled to a declaratory judgment against the third-party defendants and an order requiring the third-party defendant to participate in any payments which the Court may order the defendants to make. The defendants require and are entitled to a declaratory judgment binding on the third-party defendant construing 42 U.S.C. § 602(a)(38).

COUNT TWO:
INJUNCTIVE RELIEF

The defendants face continuing irreparable harm from the third-party defendant's refusal. Therefore, the defendants are entitled to a permanent mandatory injunction ordering the third-party defendant to participate in any payments made by the defendants as a result of this decision.

PRAYER FOR RELIEF

WHEREFORE, the defendants pray that the court:

A. Assume jurisdiction over the matters complained of in this third-party complaint.

B. Declare the meaning of 42 U.S.C. § 602(a)(38).

C. Enjoin the third party defendant to pay the federal share of any payments by the defendants to the plaintiff arising out of this action.

D. Award the defendants such other relief as is proper and just.

This the 3rd of July, 1985.

LACY H. THORNBURG
Attorney General

Steven Mansfield Shaber
Assistant Attorney General

/s/ LEMUEL W. HINTON
Lemuel W. Hinton
Assistant Attorney General

Clifton H. Duke
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 733-4618

COUNSEL FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS,

v.

CLIFTON M. GRAIG, ET AL., DEFENDANTS.

DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT

Defendants respectfully move the court pursuant to Rules 60(b)(5)&(6) of the Federal Rules of Civil Procedure, for relief from the judgment entered in this case and respectfully move that the court vacate the injunction against them.

Rule 60(b) provides as follows:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, of proceeding for the following reasons: . . . (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

These rules, particularily rule 60(b)(5), are "little more than a codification of the universally recognized principle that a court has continuing power to modify or vacate a final decree." 11 Wright and Miller, *Federal Practice and Procedure,* § 2961, p. 599. A change in applicable statutory law is a proper reason to modify a judgment. *The System Federation No. 91, Railway Employees Department, AFL-CIO v. Wright,* 364 U.S. 642 (1961); *Pennsylvia v. Wheeling and Belmount Bridge Company,* 59 U.S. (18 How.) 421 (1856). This power exists even if it

is not reserved in the original decree. *U.S. v. Swift & Co.*, 286 U.S. 106, 114 (1932).

The reason for this court's 1971 decision in the case, and the basis for its injunction, is set forth in the following language:

> Both under the most rational interpretation of 42 U.S.C. § 602(a)(7) and under the State's own regulations, it is improper to include as family resources support payments belonging individually to [plaintiff's child, who] is not a proper member of the group because he is not a "needy' child under the Social Security Act.

Gilliard v. Craig, 331 F.Supp. 587, 593 (W.D.N.C. 1971) However, effective October 1, 1984, Congress amended the Social Security Act by adopting 42 U.S.C. § 602(a)(38) which provides as follows:

> . . .that in making the determination under [42 U.S.C. § 602(a)(7)] with respect to a dependent child. . . the State agency shall (except as otherwise provided in this part) include-
>
> (A) any parent of such child, and
>
> (B)any brother or sister of such child, if such brother or sister meets the conditions subscribed clauses (1)&(2) of [42 U.S.C. § 606(a)], if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family.

Thus Congress explicitly modified the Social Security Act in a way which repeals this court's earlier grounds for decision in this case. That being so, defendants are entitled to relief from the court's judgment.

A further explanation of the defendants' reasons for

deserving relief from the judgment will be set forth in their memorandum in reply to the plaintiffs' motion for further relief, which is due to be filed July 30, 1985.

WHEREFORE, pursuant to Rule 60(b)(5)&(6), the defendants move that the court vacate its judgment and injunction in this case.

Respectfully submitted, the 10 day of July, 1985.

LACY H. THORNBURG
Attorney General

/s/ STEVEN MANSFIELD SHABER
Steven Mansfield Shaber
Assistant Attorney General

HENRY THOMAS ROSSER
Assistant Attorney General

/s/ LEMUEL HINTON (???)
Lemuel Hinton
Assistant Attorney General
Department of Justice
Post Office Box 629
Releigh, North Carolina 27602
Telephone: (919) 733-4618

AFFIDAVIT OF KAY C. FIELDS

Now comes the undersigned Kay C. Fields and, being duly sworn, deposes and says as follows:

1. I am at present the Chief, Assistance Payments Section, Division of Social Services, North Carolina Department of Human Resources. As such I am responsible for the implementation of federal and State law, regulations, and policy concerning Aid to Families with Dependent Children (AFDC). I have held this position since September, 1978. I also worked in AFDC from 1973 through 1975.

2. I am familiar with *Gilliard v. Craig*, its implementation, and its effect on AFDC in North Carolina.

3. I am familiar with 42 U.S.C.§ 602(a)(38) which was passed as part of the Deficit Reduction Act (DEFRA) and became effective on October 1, 1984. Section 602(a)(38) obligates all states, including North Carolina, to use the standard filing unit for determining AFDC eligibility.

4. The purpose of this affidavit is to explain the effect of 42 U.S.C. § 602(a)(38) on North Carolina's AFDC program in light of *Gilliard*.

5. As background, it must be understood that AFDC pays assistance to needy families. See AFDC-2360 (effective July 1, 1985) (copy attached). The threshold question is the question of who must be included in the budget unit. The next question is whether the budget unit is needy. The final question is how much assistance the family is entitled to receive.

6. Prior to 42 U.S.C. § 602(a)(38), effective, October 1, 1984, heads of households had the choice to include or exclude people who might be eligible for AFDC. This was a matter of federal regulation 45 C.F.R. § 206.10. The U.S. Department of Health and Human Services (HHS) (formerly Health, Education and Welfare) recognized this right of choice, and did not act against North Carolina on account of *Gilliard*.

7. The principal effect of 42 U.S.C. § 602(a)(38) is to require that all natural or adopted siblings and half-siblings, who live in the same home, must be included in the budget unit if any child in the home applies for or receives AFDC. This is my firm and clear understanding of the statute. It is the official policy of North Carolina in implementing the statute. And I know from training sessions and discussions with HHS officials in Washington and Atlanta that this is the official policy of the federal government as well. Most recently, I met in Washington with Mr. Gray Ashcraft and attorneys for the Office of Family Assistance, HHS, who confirmed that this is the federal position concerning 42 U.S.C. § 602(a)(38).

8. It should be noted that 42 U.S.C. § 602(a)(38) does not require North Carolina to include all the people previously excluded under *Gilliard*. Step-brothers and step-sisters are not included. Neither are cousins living with their grandmother.

9. Having established who must be in the budget unit in accordance with 42 U.S.C. § 602(a)(38), the next step is to determine whether the unit is needy. This is determined with reference to the need standard set each year by the General Assembly. Almost all income to the budget unit members counts against the need standard. Families pass the needs test if their gross income is less than 185% of the need standard.

10. After determining need, it is necessary to calculate the payment, if any. The payment standard varies with budget unit size. It is exactly one half of the need standard, a fact which reflects the existence of other forms of public assistance, notably food stamps and Medicaid and, often SSI, rent subsidies, and energy assistance. To calculate the AFDC payment, certain income which was counted against the needs standard may now be excluded. (This process is rather like the difference between business expenses which are deducted to determine adjusted gross

income and other deductions which reduce AGI to taxable income.) Insofar as the payment standard exceeds countable monthly income, the family will recieve a monthly AFDC check, provided the minimum payment is $10.00. In other words, AFDC supplements countable income.

11. Child support payments to a budget unit member are always countable income. 10 N.C.A.C. 49B .0308 attached hereto. This has always been true, even under *Gilliard,* which, of course, excluded certain children from the budget unit, but did not deny that if such a child chose to be included (perhaps to receive Medicaid), his child support income would have to be counted in determining eligibility.

12. The AFCD program does not demand that an AFDC mother spend any particular part of her budget unit's income on any particular child. She has the discretion to spend her family's income as she sees fit. Neither does the AFDC program demand that a child spend or donate any part of his income to his siblings. However, I have no doubt that AFDC mothers use family income from whatever source for all their children, as necessary or desirable. I base this opinion on my long familiarity with the program. For them to do otherwise would be almost unthinkable and would exacerbate their difficult situations.

13. Many AFDC children do receive child support, and child support payments are treated differently from other income. By law, AFDC parents must assign child support payments to the State for collection. 45 C.F.R. § 232.11. This is the child support enforcement program, Title IV-D of the Social Security Act. After the child support income is assigned to the State, the family receives a full AFDC payment each month, less any income other than child support. The State collects the child support, pays the first $50.00 of it to the family as a "disregard" or "pass through", and retains the remainder, provided, of

course, it is less than the AFDC payment. In other words, once the child support is assigned to the State, it stops being countable income, 10 N.C.A.C. 49B .0308, for purposes of determining the amount of the AFDC check.

14. The advantages of the child support program include relieving the mother of the burden of trying to enforce child support and providing her family a larger regular monthly income since the income will not fluctuate depending on the time or amount of the support payment.

The standard filing unit simplifies AFDC program administration by keeping children from moving on or off the assistance rolls as their outside income fluctuates. The standard filing unit also reserves AFDC for the most needy.

15. The AFDC payment standard goes up at a decreasing rate. Payment for a family of three (mother and two children) is $246.00. Payment for four is $269.00. This is not to say that the individual payment standard for the third child is only $23.00 ($269.00 – $246.00). The child's individual payment is the same as each of the others, $67.00 ($269.00 ÷ 4). This reflects the fact of shared household expenses.

16. Keeping in mind that the need standard is twice the payment standard (See paragraph 10. above.), the third child's individual monthly need is $135.00.

17. Applying these facts to children with outside child support who live with siblings in a family receiving AFDC, it is clear that many such children will be receiving relatively regular support in an amount greater than the increase in the AFDC payments which their families would receive if they were in the AFDC budget units. However, it is also clear that many of these will have child support payments which are less than their individual share of the AFDC payment. Still more have less than their individual share of the need standard. So, even if it were proper to assess need individually, instead of assessing it for the group, these children would be needy.

18. Not only does 42 U.S.C. § 602(a)(38) require North Carolina to include all brothers and sisters living in an AFDC home in the standard filing unit, it expressly requires North Carolina to count all the "income of or available for" these brothers and sisters.

19. I have been infomed by federal officials that if North Carolina were to disregard 42 U.S.C. § 602(a)(38), the federal government would not participate financially in these payments. This would be consistent with the federal government's refusal to participate financially in AFDC payments to families who have income in the form of *Alexander v. Hill* penalty payments. The annual cost to the State would be approximately $4,332,000.00. See, Memorandum of Quentin Uppercue, July 17, 1985 (attached hereto). The federal government would not pay its usual 68% share of this cost. Furthermore, failure to follow 42 U.S.C. § 602(a)(38) as implemented by HHS would expose North Carolina to quality control errors. At present the State's error rate is about 2.4%. Should the error rate exceed the tolerance level of 3.0%, the State would lose federal funds for each .1% the error rate rose above the limit. North Carolina's best estimate is that the error rate would increase by 2.6%, causing sanctions of $3,100,000 annually. See Memorandum of Quentin Uppercue (attached).

20. Under 42 U.S.C. § 602(a)(38), it is estimated that North Carolina will save $4.3 million in AFDC payments. Of this, about $2.9 million is federal money and the remainder state and county funds. In addition, the standard filing unit is simpler to handle for county eligibility workers, because first, it requires that all children be in the unit and eliminates the need to consider separately the usefulness of including each individual child. Second, it eliminates the many instances where mothers with children whose fathers failed to pay support for a given month come in and seek retroactive assistance for that child to compensate for the missed support payment.

21. In my opinion, the standard filing unit is fairer in that is treats AFDC families of like size equally. It prevents families from sheltering outside child support by excluding the recipient from the budget unit, something which other families cannot do. It also reflects the actual practice in AFDC families of sharing all income as needed among all children.

22. In my deposition July 17, 1985, I was asked to produce a report showing AFDC payments and administrative costs for each month October 1983, through June 1985. That chart is attached as Exhibit 4 to my deposition and is also attached to this affidavit. This chart must be read in light of many other factors affecting AFDC payments. Although the standard filing unit became effective in October, 1984, people were not required to be removed from the rolls until December. The difference between the October payment and the December payment is approximately $393,000, which is close to the annualized savings of $4.3 million. The January increase in payments is a common result of changes in employment for this time of year. Payments generally stayed up until June when summer employment caused a reduction.

23. Finally and parenthetically, let me explain the purpose of the individual need standard described in the Affidavit. The need standard is defined as the amount of money the State has determined is needed to meet a minimal standard of living for a family of a specified size. The individual need standard is determined by dividing the standard for a specified size by the number in the budget unit. The need standard is used to determine:

a. Initial eligibility (185%) rule.

b. Needs of a parent who is excluded from the assistance unit because he does not meet one or more of the eligibility requirements.

c. Needs of a parent(s) and others living in the home when deeming income to a minor mother.

d. Needs of a stepparent and other persons living in the home when deeming income from a stepparent.

e. Needs of an individual sponsor, his/her spouse, and other persons when deeming income to a non-exempt alien.

f. Dependent's need for work release.

g. Eligibility for the $30 and 1/3 disregard for an applicant who has not received in one of the four months prior to the month of application.

h. Needs of child when *Gilliard* is applied because the child is not affected by the standard filing unit rule.

KAY C. FIELDS
Kay C. Fields

Sworn to and subscribed before me, this
the 29th day of July, 1985

/s/ DONANNA L. BATES
Notary Public

My Commission Expires: 5/1/88

CHANGE NOTICE FOR MANUAL

Date July 19, 1985

Manual AFDC
Change No. 8-86

To: County Directors of Social Services

Effective: July 1, 1895 make the following changes(s) to AFDC Manual, Volume ____

On June 27, 1985, the 1985 session of the North Carolina General Assembly ratified Chapter 479 in Senate Bill 1, "An Act to Make Appropriations for Current Operations of State Department, Institution, and Agencies, and for Other Purposes," which results in two major changes in the AFDC Program. These changes are:

1. A 10% increase in the AFDC Standard of Need effective July 1, 1985. The Payment Standard will continue to be 50% of the Need Standard.

   Implementing instructions are included in DSS Administrative Letter Number PAP-1-86.

2. Authorization to provide AFDC to women beginning with their sixth month of pregnancy, regardless of whether they have children, and if they are otherwise eligible. This change is also effective July 1, 1985.

   Implementing instructions for this provision are contained in Change Number 6-86 to the AFDC Manual.

So as to comply with this legislation, AFDC-2360 is revised to include:

1. Budgeting instructions for an applicant/recipient (a/r) of pregnant women coverage. An a/r who is eligible for pregnant women coverage is always an assistance unit of one.
2. Revised Tables 1 through 5.

Remove AFDC-2360 and Tables 1-5. Insert the attached section and tables.

If you have questions, please contact your Income Maintenance Representative.

/s/ BONNIE M. CRAMER

Bonnie M. Cramer
Assistant Director for
Program Administration

KCF/dt
Attachments
DSS-2198 (8/76)
(DSS-ADM)-27A-72

North Carolina Department of Human Resources
Division of Social Services
Assistance Payments Section
AFDC Manual AFDC-2360

Transmitted by Change No. 8-86

Need Rev. 7-1-85

PAYMENT STANDARD BY NUMBER IN THE ASSISTANCE UNIT

Number in Assistance Unit	1	2	3	4	5	6	7
Payment Standard Allowance	$163	214	246	269	294	317	339

Number in Assistance Unit	8	9	10	11	12	13	14
Payment Standard Allowance	$354	369	390	407	428	449	470

For each person in the assistance unit in excess of 14, add $21 to the payment standard allowance for 14.

Table 4

FOOD ALLOWANCE FOR ASSISTANCE UNIT MEMBER TEMPORARILY ABSENT FROM HOME

Number in Assistance Unit	1	2	3	4	5	6	7
Food Allowance Per Person	$84	53	39	32	28	25	24

Number in Assistance Unit	8	9	10	11	12	13	14 & Over
Food Allowance Per Person	$23	22	21	20	20	20	20

Table 5

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION No. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS

v.

CLIFTON M. CRAIG, ET AL., DEFENDANTS

DECLARATORY OF JO ANNE B. ROSS

I, Jo Anne B. Ross, declare, certify, and state under penalty of perjury that the following is true and correct:

1. I am the Associate Commissioner for Family Assistance, Social Security Administration, Department of Health and Human Services (HHS). In this capacity, I have overall responsibility for the administration of the Federal Aid to Families with Dependent Children (AFDC) program under title IV-A of the Social Security Act. I make the following statements based upon personal knowledge attained in my official capacity.

2. The purpose of this affidavit is to 1) explain the history and operation of section 2640 of the Deficit Reduction Act of 1984 (DRA), which adds section 402(a)(38), 42 U.S.C. § 602(a)(38), to the Social Security Act, 2) explain the regulations implementing section 402(a)(38) and 3) describe the potential impact of the State's failure to comply with the law and regulations in this area.

3. Prior to 1984, there was no requirement that all co-resident family members be included in the filing unit for AFDC purposes. A family applying for AFDC assistance could, therefore, exclude from the filing unit those family members with income which would reduce or terminate

the family's AFDC benefits. In addition, in anticipation of a family member's receipt of additional income (such as Social Security benefits), the family could remove that individual from the filing unit.

4. In DRA, Congress recognized the need to offset projected massive budget deficits by further cutbacks in federally funded programs. H. Rep. No 98-861, 98th Cong., 2d Sess., House Ways and Means Committee, 1094 (1984).

5. In DRA, Congress enacted the first mandatory requirement regarding composition of the filing unit for AFDC assistance. Section 402(a) of the Act, 42 U.S.C. § 602(a), was amended by the addition of paragraph 38, which requires that the parents and siblings of an AFDC child must be included in the filing unit and have their income and resources considered available to the unit.

6. In 1982, 1983, and 1984, the Secretary of HHS submitted to the Congress proposed legislation to amend the AFDC program by mandating the inclusion of certain individuals in the AFDC filing unit. The language enacted by Congress as part of DRA is the same as the language proposed by the Secretary with minor technical changes.

7. The Secretary's 1983 proposed amendment became part of the draft of the Omnibus Reconciliation Act of 1983, Senate Bill No. 2062, 98th Cong. 1st Sess. *See* Senate Report No. 98-300 at 165 (1983). Subsequently, the proposal was incorporated into the Senate version of DRA. The Senate Committee on Finance Report, "Explanation of Provisions [of DRA] Approved by the Committee on March 21, 1984", 98th Cong. 2nd Sess., Sen. Com. Print 98-169, volume 1 at page 980 (April 2, 1984) states:

> **Present Law**
>
> There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the

filing unit certain family members who have income which might reduce the family benefit. For example *a family might choose to exclude a child who is receiving social security or child support payments*, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child. (Emphasis added.)

* * * *

Explanation of Provision

The provision approved by the Committee would require States to include in the filing unit the parents and all dependent minor siblings . . . living with a child who applies for or receives AFDC.

* * * *

This change will end the present practice whereby families exclude members with income in order to maximize family benefits, and will ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole.

8. The House of Representatives' version of DRA did not contain any provision covering this aspect of the AFDC. *See* 98 Cong. 2nd Sess., House Conference Report No. 98-861 at 1407, *reprinted* in 1984 U.S. Code Cong. & Adm. News 209. The Senate version required States "to include in the filing unit the parents and all minor siblings living with a dependent child who applies for or receives AFDC." The conference agreement follows the Senate amendment with a modification to pay a monthly disregard of $50 of child support. *Id.* On July 18, 1984, both Houses passed DRA, eliminating the previous policy of allowing families to exclude certain family members with income in order to become eligible for or to increase AFDC benefits.

9. On September 10, 1984, the Secretary published interim final regulations, 42 Fed. Reg. 35586 (1984), implementing the DRA changes, effective October 1, 1984. The regulations provides:

> For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> (A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and
>
> (B) Any blood-related or adoptive brother or sister.

49 Fed. Reg. 35599 (Sept. 10, 1984), codified at 45 CFR 206.10(a)(1)(vii).

10. HHS policy require that when a family applies for AFDC for a dependent child, all parents and all blood-related and adoptive brothers and sisters who themselves meet the age and deprivation requirements for AFDC, and who live in the household, must be included.

11. The only exceptions to this requirements are individuals who are excluded from AFDC eligibility due to a specific statutory provision barring their eligibility. For example, individuals who receive Supplemental Security Income benefits under title XVI of the Social Security Act are excluded from AFDC eligibility pursuant to section 402(a)(24) of the Social Security Act.

12. In determining the composition of an assistance unit, the State must include all parents and siblings not specifically excluded as discussed above, regardless of their income or resources. Only after that determination is made are total income and resources of all members of the assistance unit considered in determining the unit's eligibility for and the amount of the AFDC benefit.

13. I am aware of the initial decision of December 10, 1971 in the court action of *Gilliard, et al, vs. Craig, et al.* In that action, the court permanently enjoined the State

from reducing a family's AFDC benefit due to income, such as child support, received by family members who were not in the AFDC assistance unit. Until passage of DRA, compliance with the court's order would not have raised any issue of compliance with Federal statute or regulations. As described above, before passage of DRA, a family could chose to exclude certain family members from the assistance unit, and would have effectively prevented income of the excluded member from being considered in determining the AFDC benefit of the assistance unit.

14. Because DRA eliminate this option, we support the State in its implementation of section 402(a)(38). Should the State fail to include family members who were members of the class described in *Gilliard,* but who are now required to be included in assistance units, continued Federal funding of the State's AFDC program would be at risk. Similar problems would arise if the State included such individuals, but failed to consider their income or resources.

15. Federal regulations at 45 CFR 205.10(b)(3) provide that Federal financial participation is available for payments within the scope of federally aided public assistance programs made in accordance with a court order. Thus, when the Department is not party to a suit, Federal matching is not available if the State is ordered to make payments that the Department determines are not within the scope of the program. Court-ordered payments to a family which is permitted to exclude a member who is required to be included in the assistance unit pursuant to section 402(a)(38) would be considered to be outside the scope of the program and would not be matched if the Department was not a party to the suit. Refusal to match expenditures, as described above, would affect only those court-ordered payments.

16. In addition, if a State fails to comply with Federal requirements, the Secretary, pursuant to section 404(a)(2) of the Social Security Act, may seek further action against the State to withhold all federal funds for AFDC.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of July, 1985.

/s/ JO ANNE B. ROSS

Jo Anne B. Ross
Associate Commissioner
for Family Assistance
Social Security Administration
Department of Health and Human
Services

ATTACHMENT 16

AFFIDAVIT OF DAN MILES

The undersigned, Dan Miles, being first duly sworn, herein deposes and says:

1. That I am the Assistant Chief for Fiscal Operations in the North Carolina Child Support Enforcement (IV-D) Program.

2. That within the scope of my official duties I have access to information from the IV-D automated child support accounting system indicative of child support collections and disbursements for both AFDC and Non-AFDC recipients of IV-D services, and that I have access to statistical data concerning the number of individuals receiving IV-D services.

3. That in the period from October 1, 1984 through June 30, 1985, in both AFDC and Non-AFDC cases, an average of approximately 30% of individuals obligated to make child support payments paid an amount sufficient to equal or exceed their monthly support obligations, approximately 18% paid an amount less than their monthly obligations, and approximately 52% paid no support within any given month.

4. That in excess of 118,000 checks have been written to AFDC households for distribution of more than $5,397,000.00 as AFDC budget disregard for child support paid from October 1, 1984 through June 30, 1985, equating to an average monthly AFDC budget disregard payment of approximately $45.19 per month.

5. That most recently available statistics indicate the average child support obligation amount for AFDC cases to be $90.47 per month, of which 55% is paid on an average monthly basis, which would equate to payments of $49.76 per month.

6. That most recently available statistics indicate the average number of absent parents associated with an AFDC case to be 1.38, and the average number of children to be 1.78, as contrasted with an average number of absent parents for the named plaintiffs in this action of 2.4 and an average number of children for the named plaintiffs of 4.0.

7. That during the past three State fiscal years (July 1 through June 30, of the three-year period ending June 30, 1985) the following collections have been distributed to AFDC and Non-AFDC cases:

Fiscal Year	*AFDC Amount*	(% Total)	*NonAFDC Amount*	(% Total
82-83	15,876,980	(58%)	11,350,940	(42%)
83-84	21,596,696	(59%)	15,015,657	(41%)
84-85	21,899,012	(52%)	20,540,979	(48%)

8. That in the Eighth Annual Report to Congress, North Carolina ranked in the top half of the nation on three performance indices: AFDC collections per total administrative expenditures, Non-AFDC collections per total administrative expenditures, and AFDC collections per AFDC assistance payments; and that in the said report within the Southeast Region, North Carolina's respective ranking on the same performance indices was third, second, and first.

/s/ DAN MILES
Dan Miles

Sworn to and subscribed before this 29th day of July, 1985.

/s/ JUDY B. RHODES
Notary Public

My commission expires: 12-4-1988

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS,

v.

CLIFTON M. GRAIG, ET AL., DEFENDANTS.

DEFENDANTS' MOTION FOR THREE JUDGE COURT PURSUANT TO 28 U.S.C. § 2281, et seq.

The defendants respectfully move that this matter be heard by a three judge court pursuant to former 28 U.S.C. § 2281, *et seq.*

This action was decided June 10, 1971, by a three judge court consisting of Judge James B. McMillan, Judge Woodrow Wilson Jones and Judge Braxton Craven, Judge Jones dissenting. *Gilliard v. Craig,* 331 F. Supp. 587 (W.D.N.C. 1971).

At the time this case was heard and judgment was entered, 28 U.S.C. § 2281 provided as follows:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by the administrative board or commission acting under state statute, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefore is heard and determined by a district court of three judges under Section 2284 of this title.

This statute was jurisdictional. *Morales v. Turman,* 430 U.S. 322 n.* (1977); *Goosby v. Osser,* 409 U.S. 512, 522,

n.8 (1973); *Ex parte Metropolitan Water Co.*, 220 U.S. 539, 545 (1911); 17 Wright, Miller & Cooper, *Federal Practice & Procedure*, § 4235, p. 392.

The plaintiffs' present motion in the cause raises issues which can only be heard by a three judge court under the applicable statute. At issue is the constitutionality of state administrative orders under the Fifth, Fourteenth, and Tenth amendments of the Constitution. Notably, similar issues were raised in the complaint.

Section 2281 was repealed in 1976, P.L. 94-381, §§ 1&2, 90 Stat. 1119. However, the act repealing 28 U.S.C. § 2281 "shall not apply to any action commenced on or before the date of enactment." P.L. 94-381, § 7; 90 Stat. 1119, 1120. Because the plaintiff-movants are members of the class certified in this case, because they have chosen to bring their proceedings by a motion in the cause, and because 28 U.S.C. §2281 was jurisdictional, the former statute continues to apply to this case. *Morales v. Turman, supra,* at 322, n.*.

In addition, under 28 U.S.C. § 2284(b)(3), "a single judge shall not. . . hear and determine any application for a preliminary or permanent injunction or *motion to vacate such an injunction,* or enter judgment on the merits." (Emphasis added.) The present proceedings amount to a request to modify the injunction previously entered, because they ask the court to consider the effect of the new federal statute, 42 U.S.C. § 602(a)(38), on its previous decree. In addition, simultaneously with this motion for a three judge court, the defendants have moved for relief from the judgment pursuant to Rule 60(b) the Federal Rules of Civil Procedure. This motion is squarely within the jurisdiction of the three judge court, because after a three judge court has given its judgment it cannot be modified by a single judge. *Chapman v. Meier,* 420 U.S. 1, 13&14 (1975); *Molpus v. Fortune,* 311 F.Supp. 240, 244 (D.C. Miss. 1970), *affirmed* 432 F.2d 916 (5th Cir. 1970).

A federal three judge court has the power to reopen its decree after the expiration of the term. *American Insurance Company v. Lucas,* 38 F.Supp. 926 (D.C. Mo. 1941), *appeal dismissed,* 314 U.S. 575, *affirmed,* 129 F.2d 143, *cert. den.* 317 U.S. 687, *reh. den.,* 317 U.S. 712 (1943).

This is not a case of simple enforcement of the judgment, because the plaintiffs' and defendants' motions raise substantial constitutional questions to be decided. Thus, the case is distinguishable from such cases as *Allen v. County School Board of Prince Edward County,* 249 F.2d 462 (4th Cir. 1957), *cert. den.,* 355 U.S. 953 (1958).

WHEREFORE, for the foregoing reasons the defendants respectfully move that this matter be heard by a three judge court.

This the 16 day of July, 1985.

Respectfully submitted,

LACY H. THORNBURG
Attorney General

/s/ STEVEN MANSFIELD SHABER
Steven Mansfield Shaber
Assistant Attorney General

HENRY THOMAS ROSSER
Assistant Attorney General

/s/ LEMUEL HINTON (S.M.S.)
Lemuel Hinton
Assistant Attorney General
Department of Justice
Post Office Box 629
Releigh, North Carolina 27602
Telephone: (919) 733-4618

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS,

v.

PHILLIP J. KIRK, ET AL., DEFENDANTS.

ORDER

On August 9, 1985, the court denied defendants' motion that the outstanding motions be heard by a three-judge court, pursuant to former 28 U.S.C. § 2281. Defendants have now moved to certify that decision for an interlocutory appeal.

Upon consideration of the motion, the court finds that an immediate appeal is not likely to advance the ultimate termination of the litigation. Therefore, the motion will be denied.

IT IS THEREFORE ORDERED that the motion for certification for interlocutory appeal is DENIED.

This 20 day of August, 1985.

/s/ JAMES B. MCMILLER

James B. McMillan
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS,

v.

PHILLIP J. KIRK, SECRETARY, THE DEPARTMENT OF HUMAN RESOURCES IN HIS OFFICIAL CAPACITY AND C. BARRY MCCARTY, CHAIRMAN, SOCIAL SERVICES COMMISISON, IN HIS OFFICIAL CAPACITY, DEFENDANTS

v.

MARGARET HECKLER, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES IN HER OFFICIAL CAPACITY, THIRD PARTY DEFENDANT.

DEFENDANTS' IN PART MOTION TO DISMISS PLAINTIFFS' CLAIM FOR RETROACTIVE AFDC PAYMENTS

In the event the court declares that 42 U.S.C. § 602(a)(38) supercedes its 1971 judgment, but that 42 U.S.C. § 602(a)(38) is unconstitutional, the defendants respectfully move the court to dismiss the plaintiffs' claims for retroactive payments of Aid to Families with Dependent Children from October 1, 1984, to the date of such decision, on the grounds that these claims are barred by the Eleventh Amendment to the United States Constitution.

Respectfully submitted, this the 6 day of September, 1985.

LACY H. THORNBURG
Attorney General

/s/ STEVEN MANSFIELD SHABER
Steven Mansfield Shaber
Assistant Attorney General

/s/ LEMUEL W. HINTON
Lemuel W. Hinton
Assistant Attorney General

Clifton H. Duke
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Releigh, North Carolina 27602

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

Civil Action No. 2660

BEATY MAE GILLIARD; SAMUEL ODELL DAVIS; LORRAINE GILLIARD; LORETTA GILLIARD; THOMAS GILLIARD; DANA GILLIARD; GREGORY GILLIARD; REGINALD GILLIARD; AND SAMUEL DAVIS JR. GILLIARD, MINORS, BY THEIR MOTHER AND NEXT FRIEND, BEATY MAE GILLIARD, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

PHILLIP J. KIRK, SECERTARY, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, IN HIS OFFICIAL CAPACITY, AND C. BARRY MCCARTY, CHAIRMAN, NORTH CAROLINA SOCIAL SERVICES COMMISSION, IN HIS OFFICIAL CAPACITY, DEFENDANTS AND THIRD-PARTY PLAINTIFFS,

v.

OTIS R. BOWEN, M.D., SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, THIRD-PARTY DEFENDANT.

AFFIDAVIT

BONNIE M. CRAMER, being first duly sworn, avers and says of her own knowledge:

I am the Assistant Director for Program Administration of the Social Services Division of the North Carolina Department of Human Resources and, as such, I am responsible for review and supervision of the administration of various programs of public assistance and social services, including the Aid to Families with Dependent Children (AFDC) program. My responsibilities require that I be very familiar with State and Federal statutes,

rules, regulations, and policies pertaining to the administration of the AFDC program. I am also thoroughly familiar with the decision of May 7, 1986, in the *Gilliard v. Kirk v. Bowen* case and of the requirements of that decision. Implementation of those requirements will entail the following:

A. COST OF DETERMINING RETROACTIVE ELIGIBILITY

The Division of Social Services has identified 1,761 former and present AFDC cases eligible for some form of retroactive payment because of the Standard Filing Unit ruling. (See Attachment I) In order to determine how many months of retroactive payment each case is entitled to receive, a reconstruction of eligibility will have to be made for each month the case was not on AFDC. There are over 19,000 case-months of eligibility involved.

The amount of time required to reconstruct the eligibility of a case will vary depending on a number of factors. In some instances, the task of even locating the client may be formidable. Where earned income is involved, verifying a month's income from 1984 will probably require considerable effort. Virtually all of the cases involve fluctuating amounts of child support payments, so each month will require exacting attention.

There are two classes to be considered. The first group consists of the 668 cases (38%) that were terminated but have since returned to AFDC. These clients are accessible to the agency, and the number of months that must be reconstructed is relatively small. Allowing an average of three days for the eligibility specialist to reconstruct each case, it would require 2004 man days to reconstruct eligibility for this 38 percent at a projected cost of $162,404. (The average salary and benefits received by an eligibility specialist is $10.13 per hour).

The second group consists of 1,093 cases (62%) that were terminated and have not returned to AFDC.

Counties have no indication of the current whereabouts of these individuals. The AFDC worker must first locate the family, using the resources at her disposal. These include such things as the telephone directory, city directory and court records. Location of these families will be a tremendous problem due to the transient nature of this population.

After the family is located, the worker must make contact, explain the situation and get the family to make application. The worker must then conduct one or more extensive interviews to attempt to get all information necessary to determine month by month AFDC eligibility and payment amount. The AFDC case must basically be reconstructed for each retroactive month. Much of the reconstruction must be based on the memory of the AFDC applicant. Eligibility factors such as residence, deprivation, etc., must be verified each time the family moved or experienced other changes that could affect these factors.

The vast majority of these cases has or had income simply by the nature of the situation. Income must be verified monthly. Unearned income such as Social Security and Veteran's Administration benefits could be verified by the respective agencies. Verification of other unearned income, such as contribution or direct support, would depend almost entirely on the memory of the giver. Earned income must be verified by contact with the employer or wage stubs that applicant has on hand. This will place a tremendous burden on staff in locating the employers and on the employers themselves in verifying income for the retroactive months.

Household composition, i.e., those who actually lived with the family at a particular time, must also be determined monthly from memory. Changes in household composition must then be verified using school records, collateral statements, rental records, etc.

Month by month determination of eligibility and AFDC payment amounts beginning October 1984 will be an arduous task not only for the AFDC worker but also for the applicant, employers and other sources of needed verification. The average number of months which must be reconstructed for each member of this group is 18. Because of the additional number of months involved, an average of five days must be allowed for each of these cases. The projected cost associated with this group is $442,884.

Summarizing the costs of reconstructing eligibility:

Cost of reconstruction 668 cases that were terminated but have returned to AFDC	$162,404
Cost of reconstructing 1,093 cases that have not returned to AFDC	$442,884
Total Cost	$605,288

B. EFFECT ON STATE'S ERROR RATE

Payments made retroactively to AFDC recipients under court order must be made in accordance with federal eligibility policies. The State will be held liable for any errors made under current federal error rate sanction procedures. These errors could have a devastating impact on the State's error rate. The likelihood of eligibility workers making errors when month by month eligibility has to be reconstructed for each recipient retroactive to October 1984 is high.

C. COST AND EFFECT OF ADDITIONAL PAYMENTS UNDER GILLIARD

In determing the cost of retroactive benefits to affected cases, it is assumed that those terminated and who have not returned would have been eligible were it not for the presence of the ruling. This is certainly not going to be true

for all cases – in some cases the mother will have secured employment or undergone some other change in circumstance adversely affecting eligibility. However, there is no practical way to retroactively determine over 19,000 case-months of eligibility, so for these purposes eligibility will be assumed for the entire period. Similarly, for those cases terminated that have since returned, it is assumed that they would have been otherwise eligible during their absence.

The total cost of retroactive benefits is estimated at $5,249,496. Of this amount, most of the money ($4,493,328) will go to those cases which were terminated and have not returned. This figure is large because 85 percent of the terminations occurred in 1984, and such cases will have accrued many months of retroactive benefits. The remainder of the amount ($756,168) would be paid to cases that were terminated but have since returned to AFDC.

In addition to the retroactive costs, there will be ongoing additional (non-budgeted) costs. These will occur as the 1,093 terminated cases that have not returned to AFDC are recertified and begin receiving monthly payments. The monthly amount of these payments (assuming blanket eligibility to the group) will be $238,274, or $2,859,288 annually. This amount could be lower if a case-by-case redetermination of eligibility is performed.

Although federal financial participation should be available for payments, State and county funds are not budgeted for any portion of the retroactive payments of any future payments resulting from this ruling.

The State budget for SFY 1986-87 was certified by the 1985 Session of the General Assembly. Any changes to the budget must be made during the 1986 Short Session which will be held in June 1986.

G.S. 108A-88 requires that county departments of social services be notified by February 15 of each year "of the amount of State and federal monies estimated to be available, as best can be determined, to that county for programs of public assistance, social services and related administrative costs, as well as the percentage of county participation expected to be required for the budget for the succeeding fiscal year."

Local agencies must then submit their budget request by April 30 to the county budget officer for inclusion in the county budget package and submission to the local governing board by June 1. Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the governing board shall adopt a budget ordinance for the fiscal year. Thus, most county budgets have already been approved for SFY 86-87.

Counties whose actual expenditures, excluding related administrative costs, exceed the estimates for public assistance programs only provided by the Department of Human Resources may obtain a loan from the Department for funds to pay the county share of public assistance costs that exceeds the estimates. G.S. 108A-89.

State funds are not currently budgeted to support public assistance contingency loans to counties.

The following table summaries the first-year cost of the *Gilliard* ruling.

Retroactive payments to those cases that have not returned to AFDC	$4,493,328
Retroactive payments to those cases that have since returned to AFDC	$ 756,168
Sub-total (Retroactive Payments)	$5,249,496
Ongoing payments to recertified cases	$2,859,288
Total	$8,108,784

Assuming normal rates of financial participation apply, the costs by source of funds will be as follows.

Federal Participation	$5,592,930
Local Participation	$1,257,927
State Participation	$1,257,927
Total	$8,108,784

This would mean that the State would be responsible for earmarking $8.1 until suitable arrangements could be made for federal financial participation.

Each month under federally prescribed procedures, 9% of overpaid money may be recouped on the average. Based on this rate, it is unlikely that much if any of the money paid in retroactive benefits could ever be recovered.

D. RECOUPMENT OF OVERPAYMENTS

Should the State's appeal be upheld in this matter, any AFDC benefit paid pending appeal of the May 7, 1986 judgment would be an overpayment. Federal regulations require states to take all reasonable steps necessary to promptly collect any overpayments. State policy found in the AFDC Manual at 2630, copy of which is attached hereto as Attachment II and expressly incorporated herein, outlines procedures necessary to collect overpayments.

If the overpaid AFDC family remains on AFDC, the overpayment will be recouped from the AFDC payment. The rate of collection is based on the total gross income of the family. The family, after recoupment, must be left with an amount not less than 90% of the AFDC payment received by a family of similar composition with no other income. While this is the simplest collection method for the State, it results in the families, already with quite low incomes, having their incomes reduced even further. Currently only 44% of the overpayment collections in North

Carolina are by this method. The remainder of the overpayment collections are through refunds, returned checks, etc.

While the State would be required to seek to recoup these overpayments, may factors would make this difficult. Approximately 4.5% of the AFDC caseload is terminated monthly. Estimates are that $4,493,328 of the total amount of retroactive benefits would go those terminated cases that are no longer on AFDC. Local agencies lose track of many of these families making collection virtually impossible. Failure to collect these overpayments would place a tremendous burden on the State.

To collect overpayments in cases that are no longer on AFDC:

1. Counties must collect the overpayments from any member of the originally overpaid assistance unit. For example, a grandmother begins receiving AFDC for a child who was previously a member of an overpaid assistance unit. The country [sic] must begin recouping by reducing the AFDC payment of the grandmother.
2. Counties must pursue a voluntary refund from the overpaid assistance unit.
3. As a last resort, counties are to consider court action to collect the overpayment.

Once the family is terminated from AFDC, the means of collection may be harsher by comparison (i.e., court action). If the overpayment remains uncollected, and the

family again begins receiving AFDC at any time in the future, the overpayment will be collected by grant reduction, again reducing the family's income.

/s/ BONNIE M. CRAMER
Bonnie M. Cramer

North Carolina
Wake County

Sworn to and subscribed before
me this the 15th day of May, 1986.

/s/ KATHLEEN L. LANKFORD
Notary Public
My Commission Expires 3-10-91

ATTACHMENT 1

AFDC Cases Affected by Standard Filing Unit
October, 1984 – April, 1986

Month	Cases Terminated	Monthly Benefits	Cases Reduced	Monthly Reduction
October 1984	848	$166,929	24	$2,006
November	618	121,653	10	1,236
December	45	8,852	11	1,321
January 1985	32	6,299	1	108
February	18	3,192	0	0
March	9	1,601	0	0
April	10	1,927	1	194
May	15	2,782	1	194
June	8	1,476	0	0
July	14	2,329	0	0
August	16	2,940	0	0
September	14	2,976	0	0
October	17	3,317	1	165
November	18	3,467	1	25
December	15	3,029	1	23
January 1986	16	3,606	2	377
February	15	3,232	1	52
March	12	2,460	1	25
April	21	4,338	1	52
Total	1,761	346,405	56	14,177

ATTACHMENT II

North Carolina Department of Human Resources
Division of Social Services
Assistance Payments Section
AFDC Manual AFDC-2630

Transmitted by Change No. 20-85

Financial Responsibility Rev. 1-1-85

I. Requirement

Federal regulations require the State and counties to take all reasonable steps to recover promptly any overpayment and to repay any underpayment to current recipients and those who would be current recipients if the error had not occurred. Adjustment for overpayments and underpayments must begin at the time the error first occurred.

II. Definitions

A. Overpayment – Receiving more assistance than eligible to receive.

B. Underpayment – Receiving less assistance than eligible to receive.

III. Overpayments

A. An overpayment occurs when:

1. The recipient received a payment for which he is not eligible due to an error in processing or in applying program regulations, or
2. The recipient fails to report a change in situation or provides false or incorrect information which, if reported timely, would deny, reduce, or terminate assistance, or

3. The recipient receives an assistance payment greater than the authorized payment, or
4. The recipient receives a payment while on strike the last day of the month, or
5. The recipient receives a payment due to the 10 work-day notice requirement, or
6. The recipient receives a lump sum payment, including an EIC lump sum, or
7. The recipient requests continued assistance during the hearing process, and the hearing officer afirms the reduction or termination (See AFDC-2640.), or
8. A change occurs after the processing deadline which results in a case or individual being ineligible for the following month.

B. Collection of Overpayments

Collect all overpayments according to the following regulations, unless the county board or its designee determines that an overpayment results from suspected fraud. If there is suspected fraud, follow regulations in AFDC-2631.

Take prompt action to initiate recovery of all overpayments. Prompt action is defined as within the second quarter following the quarter in which the overpayment is first identified.

You must attempt to collect all overpayments from the recipient unless the overpayment occurs because of a State or county error in processing the case or in applying program regulations.

(See III. B. 3. and 4. below.) Repayment agreements should contain only the amount of the overpayment and the repayment schedule.

1. Recipient Responsible Overpayments—Active Cases
   a. Administrative Methods of Collecting Overpayments
      (1) Voluntary Repayment
      The recipient may choose to repay the overpayment by one of the following methods:
         (a) Grant Reduction—The agency must ensure that the recipient who agrees to a voluntary reduction is not treated more harshly than the recipient who has an involuntary grant reduction. You must obtain an agreement, dated and signed by the recipient, showing the amount of the deduction, the length of time the deduction will be made and the reason for the deduction. Give the recipient a copy and maintain a copy in the record.
         (b) Recipient Refund—If the agency accepts repayment by a voluntary refund, the amount must not be less than the amount that would be collected through an involuntary grant reduction. You must obtain an agreement, dated

and signed by the recipient, showing the amount of the refund, when the refund will be made, and the reason for the refund. Give the recipient a copy and maintain a copy in the record.

(2) Involuntary Grant Reduction

If the recipient does not wish to make a voluntary repayment, either through a grant reduction or a refund, establish a monthly recovery schedule based on the recipient's grant and income/resources.

b. Source of Repayment and Repayment Limitations

(1) For both voluntary repayment and involuntary grant reduction, you may collect overpayments from all income and assets of the assistance unit, including the gross family income, liquid resources, and the assistance payment.

However, the assistance unit must be allowed to retain an amount not less than 90% of the assistance payment received by a family of similar composition with no other income.

EXAMPLE: A mother and two children have total family income of $375 ($50 AFDC plus $325 gross earned income). The recipient must be allowed to keep a minimum of $221 (90% of $246, payment standard for three persons). Therefore, the maximum amount which may be recouped in this instance is $154 per month ($375-$221).

If you calculate a repayment amount which would result in an AFDC payment of less than $10, authorize a $10 payment. Recalculate the recoupment period so the assistance unit will be eligible for $10.

EXAMPLE: You calculate an overpayment and determine the assistance unit would be eligible for an AFDC payment of $6 or a zero payment. Increase the AFDC payment to a minimum of $10.

(2) When the parent is payee only, recoup from his countable income (unless SSI) and the income and assets of the assistance unit. If the parent receives SSI, he may agree to a voluntary repayment. If so, follow the requirements above on a voluntary repayment.

When the payee is a specified relative other than a parent and not included in the assistance unit, recoup from the income and assets of the assistance unit only.

2. Recipient Responsible Overpayments When Original Case Has Been Terminated

   a. Recover the overpayment from:

      (1) Any member of the original assistance unit. Collect from the individual's income and liquid resources.

      (2) Any assistance unit of which a member of the overpaid assistance unit is now a party.

      (3) The parent payee of the overpaid assistance unit. Collect from his countable income (unless SSI). If he receives SSI, he may agree to a voluntary repayment.

   b. If a former recipient not on assistance refuses to voluntarily repay the overpayment, consider initiating civil court action against the income or resources of the individual as provided below.

      (1) Small claims court is limited to amounts of $1,500 or less. This process is designed to be used without an attorney, although one may be helpful. A booklet entitled "How to Use the Magistrate's Court to Resolve Claims" is

available at your county courthouse or through the Consumer Protection Division of the Attorney General's Office.

(2) District court handles cases of $1,501-$10,000 while superior court handles cases of over $10,000. Your county attorney can handle these cases with the investigator's assistance.

(3) The county may have the recipient sign a judgment by confession if he willingly acknowledges the debt to the State/county. Before a person is asked to sign a judgment by confession, he must be told that he is waiving his right to a trial, that he is entitled to consult a lawyer, and that he may be eligible for free legal aid. This would eliminate the need for a court trial while still giving the county a legal judgment against the recipient. Your county attorney can assist in getting the judgment finalized. See Figure 2630-1.

Factors to consider in deciding whether to initiate court action include the amount of the overpayment, the cost of court action, and the likelihood of satisfying a judgment given under the North Carolina exempt property law in G. S. 1C-1601. Under the law, each individual

can keep a certain amount of property (called exempt property) that the State or a county department of social services cannot obtain even after judgment. For assistance, consult your county attorney.

c. The recoupment of overpayments from individuals no longer receiving assistance may be waived, provided repayment is requested and:
   (1) The overpayment is less than $35.00.
   (2) The individuals responsible for the overpayment have been given at least one written notice regarding the overpayment amount, the reason for the overpayment, and their responsibility for repayment.
   (3) The written notice to the individuals responsible for the overpayment is maintained in the county case record file for three years.
   (4) Recoupment is initiated if any member of the original assistance unit again begins receiving AFDC.

d. Collect the overpayment according to regulations for active cases above if the responsible individual reapplies and is approved for assistance.

3. County Responsible Overpayments – Active Cases

   a. When the State office determines from Quality Control reported errors or

through other supervisory responsibilities that an overpayment occurred because of a county error in complying with program regulations, the overpayment will be recouped by State office adjustment.

b. If the county determines through its own review of a case that an overpayment occurred because of a county error in complying with program regulations, send a letter to the Assistance Payments Section. Give the payee's name, case identification number, overpayment period, and the amount of the overpayment by month and year. See Figure 2630-2 for a suggested format that may be used when reporting these errors. The overpayment will be recouped by State office adjustment.

c. When an overpayment occurs because of a county error in processing the check, you may recoup the overpayment from the recipient, provided the recipient was properly notified of the amount of the check he was eligible to receive. See notice requirements in AFDC-2640.

4. County Responsible Overpayments—Inactive Cases

For overpayments over $35.00:

a. When the State office determines from QC reported errors or as a result of routine supervisory review responsibilities that an overpayment occurred

because of a county error in complying with program regulations, you will be notified of the error by the Assistance Payments Section. A State office adjustment will be made at that time.

b. If the county determines through its own review of a case that an overpayment occurred because of a county error in complying with program regulations, send a letter to the Assistance Payments Section. Give the payee's name, case identification number, overpayment period, and the amount of the overpayment by month and year. See Figure 2630-2 for a suggested format that may be used when reporting these errors. A State office adjustment will be made at that time.

For overpayments $35.00 or less:

a. When the State office determines from QC reported errors or as a result of routine supervisory review responsibilities that an overpayment occurred because of a county error in complying with program regulations, you will be notified of the error by the Assistance Payments Section. No State office adjustment will be made at that time.

If any member of the original assistance unit who receives the overpayment again begins receiving AFDC, you must notify the Assistance Payments

Section in writing. Give the payee's name, current case ID, case ID of the original case, overpayment period and amounts. See Figure 2630-2 for a suggested format that may be used when reporting these errors. The overpayment will be recouped by State office adjustment.

b. If the county determines through its own review of a case that an overpayment occurred because of a county error in complying with program regulations, send a letter to the Assistance Payments Section. Give the payee's name, case identification number, overpayment period, and the amount of the overpayment by month and year. See Figure 2630-2 for a suggested format that may be used when reporting these errors. No State office adjustment will be made at that time.

If any member of the original assistance unit who receives the overpayment again begins receiving AFDC, you must notify the Assistance Payments Section in writing. Give the payee's name, current case ID, case ID of the original case, overpayment period and amounts. See Figure 2630-2 for a suggested format that may be used when reporting these errors. The overpayment will be recouped by State office adjustment.

5. State Responsible Overpayments – Active and Inactive Cases

   If an overpayment occurs because of a State office error in interpreting federal and state rules and regulations, the overpayment will be charged to the State.

   When an overpayment occurs because of a State office error in processing the check, you may recoup the overpayment from the recipient provided the recipient was properly notified of the amount of the check he was eligible to receive. See notice requirements in AFDC-2640.

6. Transfer cases

   The collection of recipient responsible overpayments remains the responsibility of the first county until the case becomes active in the second county. When the case becomes active in the second county, the collection of the overpayment becomes the second county's responsibility. The overpayment may be collected either by a refund or a grant reduction. Because the second county assumes the administrative costs for collection, it will not reimburse the first county when collections are received on transfer cases.

IV. Underpayments

A. An underpayment occurs when the recipient receives an assistance payment which is less than the amount for which he is eligible because of:

   1. Incorrect application of program regulations,

2. An error in computing the payment, or
3. An error in processing.

B. You must promptly reimburse the recipient for all county and State responsible underpayments when:
   1. The case continues to be active.
   2. The recipient reapplies for assistance and is found to be eligible.
   3. The case would have been active if the error had not occurred.
   4. The underpayments are not offset by overpayments.

V. Overpayment and Underpayment Calculations

A. Verify all changes according to the AFDC-2300 series. Use the regulations in effect when the error occurred.

B. Determine the incorrect payment period. The overpayment/underpayment period is the month when a change should have been effective until the month the change is made.

C. Determine eligibility for the overpayment period as it would have been done had the error not occurred. Compute income as instructed in AFDC-2350. If the income is enough to terminate, consider the case ineligible only for the first month of the overpayment period (or the first and/or second months if in prospective budgeting). For subsequent months, follow appropriate retrospective budgeting procedures.

Follow all regulations, including notice requirements, in AFDC-2640.

D. Always consider the child/spousal support obligation when determining the amount of recoupment for the overpayment month. This applies even when a check is returned.

For overpayments that occurred prior to January 1, 1985, you must:

1. Determine the net AFDC payment by subtracting the child/spousal support obligation from the amount of AFDC actually paid.

   EXAMPLE: $214 – AFDC actually paid
   – 50 – Child/spousal support obligation
   $164 – Net AFDC payment

2. Compare the net AFDC payment to the overpayment amount. If the overpayment amount equals or exceeds the net AFDC payment, recoup the net AFDC payment amount. Example: $170 overpayment; $164 net AFDC; recoup $164.
3. If the overpayment amount is less than the net AFDC amount, recoup the overpayment amount. Example: $50 overpayment; $164 net AFDC; recoup $50.

For overpayments that occurred on or after January 1, 1985, you must:

1. Subtract $50 from the child/spousal support obligation to determine the adjusted support obligation. If the obligation amount is less than $50, subtract the amount of the obligation.

For example: Child/spousal obligation = $75; Subtract $50; Adjusted obligation = $25.

Child/spousal obligation = $35; Subtract $35; Adjusted obligation = $0.

2. Determine the net AFDC payment by subtracting the adjusted child/spousal support obligation from the amount of AFDC actually paid.

   EXAMPLE: $214 – AFDC actually paid
   – 50 – Adjusted child/spousal support obligation
   $164 – Net AFDC payment

3. Compare the net AFDC payment to the overpayment amount. If the overpayment amount equals or exceeds the net AFDC payment, recoup the net AFDC payment amount. Example: $170 overpayment; $164 net AFDC; recoup $164.

4. If the overpayment amount is less than the net AFDC amount, recoup the overpayment amount. Example: $50 overpayment; $164 net AFDC; recoup $50.

E. Compare the overpayment and the underpayment when they both occur during the same period and are both recipient responsible. If the overpayment exceeds the underpayment, subtract the underpayment from the overpayment to determine the net overpayment to collect. If the

underpayment exceeds the overpayment, no action is necessary. Do not reimburse recipients for recipient responsible errors.

If an overpayment and underpayment occur during the same period and are both county responsible, you must reimburse the recipient for the underpayment and the overpayment will be recouped by State office adjustment.

If an overpayment and underpayment occur during the same period and are not both county or both recipient responsible, a net overpayment or underpayment cannot be determined. In these situations, the recipient must be reimbursed for all county responsible underpayments. Overpayments that are recipient responsible must be collected from the recipient. Overpayments that are county responsible will be recouped by State office adjustment.

F. Take appropriate action to collect any overpayments.

G. Request an adjusted payment to correct an underpayment according to the procedures in the EIS User's Manual.

Do not count the adjusted payment as income or as a resource in the month paid or in the following month.

VI. QC Reported Error Cases

A. The Quality Assurance Section will forward findings of error to the county departments. Upon receipt, take the following actions:

1. Review findings of error.

2. Contact the Quality Assurance Section of the State office within ten workdays if there is disagreement with the findings. (See Figure 2630-3.) If there is no disagreement, the error stands as reported and is forwarded to the Assistance Payments Section for financial review.

B. The Assistance Payments Section will request that the county department provide within 15 days the amount and duration of the error as well as the county's corrective action. (See Figure 2630-4.)

VIII. Financial Review Procedures

A. For QC and other reported error cases, the Assistance Payments Section will:

1. Review the information provided by the county department.
2. Notify the county department of financial review findings.
3. Notify the Federal Grants and Reporting Section of adjustment required for State and county responsible overpayments.

B. Responsibilities of the County Department

1. Take action to recoup the recipient responsible overpayment, or
2. Make an adjusted payment to the recipient.
3. Notify the Federal Grants and Reporting Section of action to collect the recipient responsible overpayment.

C. County Procedures for Reconsideration and Appeal

1. If you do not agree with the findings of financial responsibility, you may request a reconsideration. If so, submit additional information along with your request to the Assistant Payments Section.
2. If you do not agree with the decision on the reconsideration, you may appeal. Appeal procedures are outlined in County Letter A-2-82.

Figure 2630-1

SAMPLE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

NORTH CAROLINA

_____ COUNTY,

_____ COUNTY, PLAINTIFF

v.

_____, DEFENDANT

JUDGMENT BY CONFESSION

THE UNDERSIGNED DEFENDANT, a resident of _____ County, DOES HEREBY CONFESS JUDGMENT in favor of _____ County in the sum of _____ dollars ($) and DOES HEREBY AUTHORIZE the Clerk of Superior Court to enter judgment against me therefore.

I further acknowledge and confess that I have received Public Assistance payments in the total amount stated above, to which I was not entitled. I further acknowledge and confess that I have signed, freely and without coercion, a Promissory Note to insure repayment of the above stated sum in the manner indicated in said Note and authorize _____ County to file this judgment against me at such time as I should fail or refuse or otherwise default in the repayment of this sum as agreed.

_____
Signature of Defendant

The undersigned recipient, the Defendant herein, being first duly sworn, depose and say: that I have read the

foregoing Judgment by Confession and that the matters and things contained therein are true of my own knowledge. I also affirm that I understand that by signing this Confession I waive my right to a Civil Court trial.

_____

Sworn to and subscribed before me
this the ____ day of _____, 19 ____.

_____
NOTARY PUBLIC

My Commission Expires: _____

Figure 2630-2

COUNTY REPORTED OVERPAYMENT

_____ County Department of Social Services

Payee Name: _____

Case I.D. #: _____

County Case #: _____

Reason: _____

_____

_____

Total Overpayment: _____

Month/Year	*Amount*
_____	_____
_____	_____
_____	_____
_____	_____

This information is being submitted in accordance with AFDC Manual Section 2630 for State Office adjustment.

_____ _____

(County Director's Signature) (Date)

Submit To:
Assistance Payments Section
Division of Social Services
325 N. Salisbury Street
Raleigh, North Carolina 27611

Figure 2630-3

DSS-1285 (Rev. 4/81)
Quality Assurance

MEMORANDUM Date Mailed _____

TO: _____, Director
_____ County Department of Social Services

FROM: Zelda C. Epley, Chief, Quality Assurance

RE: Case Name _____ Program _____
County Case No. _____ Account No. ____
QC Review No. _____ County No. ____

An error in payment has been found in the above-mentioned case by Quality Control. Please review and list facts in the space below to indicate any disagreement.

_____ _____
DATE NAME OF WORKER

NOTE: If this is not received by the Quality Assurance office by ___/___/___ (10 work days from date mailed), the QC findings will stand.

Mail original and 1 copy to:
Quality Assurance Section
Division of Social Services
325 North Salisbury Street
Raleigh, North Carolina 28611

Retain 1 copy for eligibility file.

Figure 2630-4

DSS-2969 (Rev. 7/82)
Assistance Payments Section
Date Mailed _____

FINANCIAL REVIEW

Memorandum

To: _____, Director
_____ County Department of Social Services

From: Kay C. Fields, Chief, Assistance Payments Section

RE: Information required for financial review of QC cases

We have been advised that an error has been determined by QC in the following AFDC case. In order for us to complete our financial review, we will need a statement regarding the amount and duration of the incorrect payment, and your corrective action. Please enter this information in the space indicated below.

A. Case Identification

Case Number _____Account No. _____
QC Review No. _____QC Review Date _____

B. Incorrect Payment Amount and Duration

C. County Corrective Action

Name of Worker	Date Completed

NOTE: Please complete this form by __/__/__ and return it to the following address:

Assistance Payments Section
Division of Social Services
325 North Salisbury Street
Raleigh, North Carolina 28611

FINANCIAL REVIEW

NORTH CAROLINA)
) **AFFIDAVIT**
WAKE COUNTY)

I, Dianne Jefferys, duly sworn, do depose and say:

1. I live at 157 Mangum Drive in Wendell, North Carolina.

2. I have four children: Latoya T. Jefferys, age 8; Anettress T. Jefferys, age 5; Shanta M. Jefferys, age 4; Anthony T. Jefferys, age 2.

3. I am 25 years old. I do not have a job and have no independent income of any kind.

4. I am married to Michael Jefferys, although we have been separated for many years. He is the father of Latoya and Anthony. As a result of a court order in the Wake County case 79 CVD 2360, he is required to pay $51 a week in support.

5. Johnny Michael Shannon is the father of Shanta and Anettress. No paternity determination has been made by a court regarding Mr. Shannon, nor has he been ordered to pay support.

6. Prior to October, 1984, I received AFDC for myself and Anettress and Shanta in the amount of $223 a month. I received child support from Michael Jefferys of $204 per month. The total was $427.

7. After October, 1984, I was required to add Latoya and Anthony to the AFDC grant. Neither I nor the children's father wanted them added to the welfare unit, but I had no real choice because I had to have some income to support Shanta and Anettress.

8. In November, 1984, my AFDC grant increased to $267 per month. I also received a $50 check each month as the child support disregard.

9. I have not received a $50 disregard check since May, 1985. I later found out this was because Michael Jefferys stopped paying support. I don't know why he stopped pay-

ing support, but he has told me that he feels like when he pays, his children do not really benefit. He feels like he is supporting all my kids when he pays support.

10. My AFDC check is now my only income. It has gone up to $294 because of the ten percent increase that went into effect July 1, 1985.

11. After my income dropped, I experienced extreme financial difficulties. I could barely afford the rent of $200 per month for my house on my income of $427 per month. After the new rule went into effect and my income went down I got behind on my rent and was evicted in June. I could not find a place to live that I could afford on my lower income. I had to move in with my cousin, who already had a household of four. Due to her kindness my family has been able to stay there, but we really need a place of our own. I got behind on most of my other bills and have had a terrible struggle trying to keep the bunk beds I bought for my children. I cannot buy any clothes or shoes for the children, and have been getting used clothing from charitable organizations. I have had to miss several doctor's appointments because I have not had money to pay for transportation.

/s/ DIANE JEFFERYS
Diane Jefferys

SWORN TO and subscribed before me
this 13th day of September, 1985

/s/ GERALDINE B. SANDERS
Notary Public

My Commission Expires: August 20, 1985

NORTH CAROLINA)
) **SUPPLEMENTAL AFFIDAVIT**
DURHAM COUNTY)

I, Arvis Waters, Being Duly Sworn, Do Depose and Say:

1. Since the time the Standard Filing Unit went into effect, my family and I have been off and on AFDC several times. I am not currently receiving AFDC benefits, but have reapplied.

2. My understanding is that the father of my two youngest children regularly pays $45 a week into the Clerk of Court in Bronx, New York. This money is not transmitted to me or the Clerk of Court in Durham County, North Carolina on a regular basis. The Clerk in New York has informed me that the office there is too backlogged to send the money as it is paid in.

3. I moved to North Carolina from New York in May, 1984. The last child support, I received in New York was in April, 1984. I worked from May through August and did not receive any AFDC benefits during that time. Because of the backlog in New York, however, I did not receive any of the child support paid for those months.

4. When I returned to school in September, 1984, I began to receive AFDC benefits. I received AFDC from September through December 1984.

5. In November, 1984, accumulated child support of $495 was sent to me. This caused my AFDC check to be terminated effective December 1, 1984, despite the fact that this amount represented child support during the months I worked and was not receiving AFDC. I had no income for December, January and a portion of February.

6. I was permitted to reapply for AFDC in February, and was reinstated, at the rate of $288 a month, in March. I also received a pro rated check for part of February.

7. I continued to receive $288 per month in AFDC benefits through July.

8. In May, another accumulated child support check, for $585, was sent to me from New York. I reported this to the Department of Social Services and was informed that it would cause my AFDC to again be terminated. For reasons I do not understand, the AFDC check was not terminated, and I received $288 in AFDC through July.

9. In August, my AFDC check was in the amount of $195. I was informed by my worker that my benefits were being reduced to recoup the benefits I received after receiving the May child support check. I have not been informed how much the department intends to recoup.

10. Also in August, I checked with the Durham Clerk of Court's office and learned that $810 in child support had been sent from New York in July. This money was sent to the North Carolina Department of Human Resources. I immediately went to talk with my worker at Durham D.S.S. to learn how that money would be distributed. My worker told me that if I returned the August AFDC check, I could receive all but $288 of the $810 support check. The $288 would reimburse the state for the AFDC paid in July, the month the support was received.

11. I returned my August AFDC check and voluntarily terminated my AFDC case, based on the information obtained from Durham, D.S.S. At the end of August I received a check for $50, representing the disregard for the July support received.

12. I returned to D.S.S. to try to learn why I had only received $50. At that time my worker said he had been mistaken and that all the remainder of the $810 in child support would be retained by the state. I tried to get my August check back, but that request was denied. I reapplied for AFDC, but have not yet been certified or received any money.

13. Other than the one $50 payment I received in August, I have not received any child support disregard checks.

14. As a result of being without income, I have absolutely no money. I have run out of just about everything that cannot be purchased with Food Stamps, such as soap, toothpaste, toilet paper, etc. My rent has not been paid for September. When my son had an asthma attack, I did not have enough cash to pay a cab to get him to the health clinic. Both Aaron and Bernard are pigeon toed and need to wear hard shoes, but I cannot by [sic] them. None of the children have had any new clothes or shoes for several months. It is only through the kindness of a friend that I even have diapers for the baby. I am extremely frustrated and do not understand why my children cannot get the child support being paid for them.

This the 13th day of September, 1985.

/s/ ARVIS WATERS
Arvis Waters

SWORN TO and subscribed before me
this 13th day of September, 1985

/s/ PAUL BALDASAU, JR.
Notary Public

My Commission Expires: 11/22/86

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS,

v.

PHILLIP J. KIRK, SECRETARY, THE DEPARTMENT OF HUMAN RESOURCES IN HIS OFFICIAL CAPACITY AND C. BARRY MCCARTY, CHAIRMAN, SOCIAL SERVICES COMMISSION, IN HIS OFFICIAL CAPACITY, DEFENDANTS

DECLARATION OF CAROL B. STACK

I, Carol Stack, hereby declare under penalty of perjury that the following facts are true and correct:

1. I am an Associate Professor of Public Policy Studies and the Director of the Center for the Study of the Family and the State at Duke University.

2. I have a Ph.D. degree in anthropology, and have conducted numerous research projects and scholarly investigations on the subject of kinship structures in black and poor families, and particularly on the impact of welfare policy on those structures. A copy of my resume, which lists the articles and books I have written on these topics, is attached to this declaration as Exhibit A, and incorporated by reference herein.

3. I am generally familiar with the federal and state laws, regulations, and policies governing the AFDC program in (North Carolina). I am familiar with the state's laws and policies regarding the obligation of absent parents to pay child support. I am also familiar with the programs and service provided by the Child Support En-

forcement Agency ("IV-D") in North Carolina, to assist custodial parents and the state to collect child support payments from absent parents.

5. Prior to preparing this declaration, I reviewed the plantiffs' Motion for Further Relief in this litigation, and all attachments thereto, including the affadavits [sic] by movants Thomas, Medlin, Miles, and Waters. I have also reviewed the statutes and regulations which create the "standard filing unit," including 42 U.S.C. § 602(a)(38) and AFDC Manual Section—2360.

6. I have also reviewed the affidavits of Kay Fields and Jo Anne B. Ross, filed by defendants, as well as the depositions of Dan Miles, Kay Fields, and the movants.

7. Based on my review of these documents, and my expertise about the kinship structure and cultural norms of poor and black families and about welfare policy, I am able to make the following statements.

8. The literature on the impact of divorce on children shows that children who fare best are those who experience the continued interest and support, both financial and emotional, of both parents.

9. In poor families, the continued interest and support of the father is of particular importance to the child because the father, when he acknowledges and supports his child, brings to the child the support of his entire extended kin network. It is fairly widely recognized in the scholarly literature (Hill 1975, Stack 1974) that in low-income communities, and expecially in low-income rural and urban black communities, mothers come to depend upon extended kin networks very heavily. In fact, extended kin ties create a community of concern for single mothers that forms the basis for emotional and physical survival.

For mothers living near or under the poverty level, adult kin, a child's aunts, uncles, and grandparents, provide goods and services, child care, help in time of crisis. An in-

heritance of sorts is given to the child by this kin network, in the form of acts of mutual responsibility. Raising children on a limited budget puts abnormal stress on mothers. While they are able to negotiate typical days and weeks—if any are "typical"—they need help in times of crisis. Many mothers could not financially or emotionally handle the plethora of parenting crises—sick children, evictions, fires, the strains of inadequate housing, transportation, and medical care—without the steady, predictable, and reliable resource of their kin networks.

10. It is well documented that the family support system for young children in poor communities is drawn from a child's relatives through both their parents and in black communities this is generally the case even if the parents were never married. This has been shown in my own ethnographic research, in a book titled ALL OUR KIN (Stack 1974), in the work of Dr. Robert Hill, THE STRENGTHS OF BLACK FAMILIES (1972) and INFORMAL ADOPTION IN BLACK FAMILIES (1977), and in a recent study by Ronald Haskins and Andrew Doblestein (1985) on the impact of Child Support Enforcement (IV-D) on the role of fathers in the lives of their children. These studies show that the paternal kin are often as anxious as mother's kin to share in the rewards and responsibilities of a new child.

11. It is not easy under the best of circumstances for mothers in low income families to create and sustain the interest, concern, and responsibility of fathers and paternal kin toward their children. To maintain this support, mothers must respond to a complicated system of cultural rewards, to allow father and paternal kin access to their children. The father must be permitted to feel that they have some control and responsibility over the child's upbringing and future possibilities. Mothers sustain such relationships with fathers in order to avoid the detrimental consequence to the child that would result if network ties with the father and his kin were placed in jeopardy.

12. When it is possible for a father, married or single, to provide enough child support to keep his child off the welfare rolls, this act of responsibility and integrity brings status to the father, especially in communities in which a future of chronic unemployment is a real risk for many children. This is not to imply that being on welfare necessarily entails a stigmatized status, for it is a necessity for the majority of black mothers. Rather, there are incentives within the structure of black communities, as well as in the public sector, that encourage fathers to keep their children off the welfare rolls. A father gains great self esteem and status in low income communities if he can give his child the chance for a life of gainful employment rather than welfare dependency.

13. In communities whose families live in poverty, fathers who are able to support their children are considered to have a depth of character and integrity that defies unfair myths and stereotypes about fathers in general, and black fathers in particular. A law that tells fathers that their efforts cannot keep their children off the welfare rools, or that what they can provide is not good enough, challenges the efforts and integrity of good men and fathers. Feelings of anger, frustration and shame are not inappropriate or unexpected. The anger is sometimes vented at children, sometimes at mothers, more often at both.

14. Fathers may express this anger and frustration in many forms. Some fathers, who live with or near their own relatives, may attempt to poison their own kin's feelings about a mother who cooperates in placing the father's child on the welfare rolls. The father and his kin may cease to visit the child and withdraw network support. In other instances, fathers will refuse to make support payments to the state, even though they were reliable in providing child support payments to keep their children off the welfare rolls. The actions of John Pennington, the father of

movant Dianne Thomas's child Sherrod, show such a reaction by a father who has found out that the standard filing unit regulation will put his child on the welfare rolls in spite of his regular payment of child support. (See Affidavit of Dianne Thomas, paragraphs 8, 11.)

15. The anger and frustration that fathers feel and express when their children are forced on welfare will endanger the child's relationship with the father's kin network. When the kin network is endangered, it is the child that suffers first. When the mother's access to the resources of the father and his kin is jeopardized, the mother is place under great emotional and physical stress, and the child, in consequence, whose development is already at risk, is placed in an even more vulnerable position.

A study of child abuse by Michael Wald, Professor of Law at the Stanford University Law School, demonstrates that mothers and children are more vulnerable when there is a lapse in the viability of the family network. When mutual aid is provided by the kin network, children are less at risk; when the mother becomes unable to rely on the network, that is when the incidence of child abuse, neglect, and other problems increases.

This declaration is submitted pursuant to 28 U.S.C. § 1746.

Date: September 13, 1985

/s/ CAROL B. STACK

Carol B. Stack

EXHIBIT A

November, 1984

Carol B. Stack

Home Address

Route 1, Box 201-H
Durham, N.C. 27705
(919) 967-2917

Business Address

Institute of Policy
Sciences
Duke University
4875 Duke Station
Durham, N.C. 27706
(919) 684-2871

Current Position

Director, Center for the Study of the Family and the State, Associate Professor of Public Policy Studies, Institute of Policy Sciences and Public Affairs, Adjunct Associate Professor, Anthropology, Duke University

Education

Undergraduate—B.A., Philosophy
University of California, Berkeley, 1961

Graduate—Ph.D., Anthropology
University of Illinois, Urbana, 1972

Research Interests

The Social Anthropology of Urban Anthropology; Social Welfare and Family Policy; Black Migration in the U.S.; Culture, Life Cycle, and Gender Inequality

Employment

1975 to present
Associate Professor of Public Policy Studies and Anthropology
Institute of Policy Sciences and Public Affairs
Duke University

Employment (cont.)

1974-1975
Visiting Professor, Department of Anthropology
University of California, Berkeley

1972-1974
Assistant Professor, Department of Anthropology and Center for Applied Anthropology
Boston University

1971-1972
Assistant Professor of Child Development and Anthropology
University of Illinois, Urbana

1962-1964
Social Studies Teacher
Berkeley High School

Grants, Fellowships

Nominated to be a Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford, 1987

Rockefeller Foundation Humanities Fellowship, 1984

Duke University Research Council, Major Grant, 1983

National Organization of Professional and Business Women, Scholar of the Year Research Award, 1982

Duke-UNC Women's Studies Research Center, Faculty Award, 1982

National Science Foundation—Society for Applied Anthropology Travel Grant to Edinburgh, Scotland, April, 1981

Mary Reynolds Babcock Research Grant to the Center, "Employment and Families in Mecklenburg County, N.C.," 1980

Z. Smith Reynolds Foundation Grant to the Center, "Children and The Law in North Carolina," 1980

Grants, Fellowships (Cont.)

North Carolina Humanities Committee Conference Grant, "The Family and the State: Scarce Resources, Shared Responsibilities, Duke University, May 12-13, 1978

Principal Investigator, National Institute of Mental Health Post-Doctoral Training Program in National Policy and the Family, 1977-1980

Summer Fellowship, National Endowment of the Humanities, 1976

National Institute of Mental Health Dissertation Research Grant, 1969-1971

National Institute of Mental Health, Predoctoral Research Fellow, 1966-1970

National Committees and Boards

President, National Society for Urban Anthropologists, 1984-1985

Signs, Editorial Board, 1985

Advisory Board, National Child Welfare Leadership Center

Advisory Board, Wenner-Gren Foundation for Anthropological Research, New York, 1980-1984

Advisory Board, Family Impact Seminar, Institute for Educational Leadership, Washington, D.C., 1978-1983

Senior Fellow, Center for the Study of Aging and Human Development, Duke University Medical Center

National Advisory Committee on Research, White House Conference on Families

American Society for the Advancement of Science Congressional Fellowship Selection Committee

National Committees and Boards (Cont.)

National Academy of Sciences, Panel for the Study of the Policy Formation Process

Books

All Our Kin: Strategies For Survival in a Black Community, New York, Harper and Row, 1974

Holding On To The Land and The Lord: Essays on Kinship, Ritual, Land Tenure, and Social Policy, edited by Robert L. Hall and Carol B. Stack, Georgia, University of Georgia Press, 1982

Hope and Circumstance: The Homeward Bound Migration of Black Families to the American South, New York, Pantheon Press, in preparation

The Rites of Children: Culture, Ideology, and Social Policy, New York, Pantheon Press, in preparation

Articles

"The Kindred of Viola Jackson: Residence and Family Organization of An Urban Black American Family," in *Afro-American Anthropology: Contemporary Perspectives,* N. Whitten, Jr., and J. Szwed, eds., The Free Press, New York, 1970

reprinted in *Cultural and Social Anthropology,* Selected Readings, B. Hammond, ed., MacMillan, 1973

reprinted in *City Ways: Reader in Urban Anthropology,* P. Gmelch and W. Zenner, eds., St., Martin's Press, 1975

"Black Kindreds: Parenthood and Personal Kindreds Among Blacks Supported by Welfare," Journal of Comparative Family Studies, Fall, 1972

"The Concept of Family in the Poor Black Community," by C. Stack and H. Semmel, *The Family, Poverty, and Welfare Program: Factors Influencing Family*

Articles (Cont.)

Instability, Studies in Public Welfare, Paper No. 12 (Part II), Government Printing Office, No. 5270-02040

"Sex Roles and Survival Strategies in an Urban Black Community," in *Women, Culture, and Society,* L. Lamphere and M. Rosaldo, eds., Stanford University Press, 1974

reprinted in *Social Interaction: Introductory Readings in Sociology,* H. Robboy, S. Greenblatt, and C. Clark, eds., St. Martin's Press, 1979

reprinted in *Sex and the Gender Reader,* L. Richardson and V. Taylor, eds., D.C. Heath, 1981

reprinted in *The Black Woman Cross-Culturally,* F.C. Steady, ed., Schenkman, 1981

"Who Raises Black Children," in *World Anthropology,* T. Williams, ed., Mouton Publishers, 1975 (reprinted from *All Our Kin*)

"Social Insecurity: Breaking Up Poor Families," in *Welfare in America: Controlling the Dangerous Classes,* Betty Reid Mandell, ed., Stanford University Press, 1974

"Economically Cooperating Units in an Urban Black Community," C. Stack and J. Lombardi, in *Anthropology and the Public Interest,* P. Sanday, ed., Academic Press, 1976

reprinted in *Issues in Black Mental Health,* Southern Regional Educational Board, Spring, 1978

"Who Owns the Child? Divorce and Child Custody Decisions in Middle-Class Families," in Social Problems, Vol. 23, No.4, April, 1976

Articles (Cont.)

"Income Support Policies and the Family," C. Stack and C. Blaydon, in Daedalus, Special Issue on the Family, April, 1977

"Organizing Kinfolk," by C. Stack and L. Holt, Anthropology Resource Center Newsletter 3:2, June, 1979

"Age, Ethnicity, and The American Family," by C. Stack and J. Weatherford, in *Family and Older Persons: Policy, Research, and Practice,* Maddox, Seigler, and Blazer, eds., published by the Duke Center for the Study of Aging and Human Development, 1980

"Children's Rites: Professional Wisdom, Cultural Realities," in Martha Cox and Roger Cox, eds., *Foster Care: Current Issues and Practice,* Ablex Press, 1984

"Cultural Perspectives on Child Welfare," in *Review of Law and Social Change,* Spring, 1984

"Experiments with Truth," in *Measuring The Impact of Interventions,* edited by Robert Morone, University of Arizona Press, 1985

"Who Counts: Black Home Place Migration To North Carolina, 1975-1980," *The Professional Geographer,* Fall, 1985.

"Three Domestics," by John Marshall, reviewed in the American Anthropologist, Vol.75, No.2, Page 590, April, 1973

Papers Presented at Professional Meetings

"Who Counts: Black Home Place Migration," Southeastern Geography Association, October, 1984

"Family, Gender and Sexual Movements in Contemporary Society," Discussant, American Anthropological Association, Chicago, November, 1983

Articles (Cont.)

"Urban-Rural Migration to the American South," Society for Applied Anthropology, San Diego, California, March 11, 1983

"Anthropological Training Programs in Family Policy," Society for Applied Anthropology, Edinburgh, Scotland, April 12, 1981

"Anthropology and Public Policy," Organizer, Plenary Session (with Jan Brukman, Wenner Gren Foundation), American Anthropological Association, Washington, D.C., December, 1980

"The Rural South: Problems and Prospects," Organizer, Key Symposium, Southern Anthropological Association, March, 1980

"Divorce and Child Custody in the U.S.," Symposium on Children and Families, American Anthropological Association, 1976

"Politics and Public Policy in Complex Society," American Anthropological Association, 1976

"Network Support Systems in Urban Black Families," American Association for the Advancement of Science, 1975

"Social Mobility in Complex Society," American Anthropological Association, 1974

"Black and Female", The Second Berkshire Conference on the History of Women, 1974

"Child-Givers and Child-Receivers," International Congress of Anthropological and Ethnological Sciences, 1973

Invited Talks

"Hope and Circumstance: Black Migration in the U.S." The Miller Lectur[sic]ship, University of Illinois, Urbana, October, 1984

Invited Talks (Cont.)

"Experiments with Truth," Arizona State University School of Social Work, Conference on "Measuring the Impact of Interventions." May 15, 1984.

"The Future of the South," Presented to the *Standing Committee on the Future of the South.* June, 1984.

"Child Welfare and Social Justice," Smith School for Social Work Visiting Lecture, Smith College, Northampton, Mass., July, 1983

"Psychological Parenting Theory and Child Welfare," Rutgers University School of Law, April 30, 1983

"Homeward Bound: Black Women and Migration in the 1980's," Cornell University, April 26, 1983

"Women and The New Class War," Anna Howard Shaw Lecture, Bryn Mawr College, March 31, 1983

"A Dual System of Children's Rights," Grand Rounds, Psychiatry, Duke University Medical Center, October, 1981

"Values in Conflict: Finding Common Ground," Keynote Address, Family Service Association of America, Biennial Conference, San Antonio, Texas, August, 1981

"Homeward Bound: Reverse Migration in the 1980's," Blue Ridge Institute for Southern Community Service Executives, Black Mountain, North Carolina, July, 1981

"Foster Care and Permanency Planning," North Carolina Coalition for Foster Children, Annual Meeting, February, 1981

"The Black Undercount," U.S. Brueau of the Census, Washington, D.C., December, 1980

"Government Policies and Family Values," North Carolina Humanities Committee and Family Services

Invited Talks (Cont.)

of Greater Greensboro, Conference on The Family in Contemporary Society, December, 1980

"Parents as Educators: Anthropological Perspectives," National Institute of Education, July, 1980

"Family Networks and Public Policies," Research Triangle Institute, April, 1980

"Single Parents," Durham County Hospital, March, 1980

"Child Policy: Ethical Issues," Conference on Governing the Youth, University of Maryland, February, 1980

"Family Policy: In Whose Best Interests?" International Year of the Child Symposium, Center for International Studies, Duke University, December, 1979

"All Our Families," Invited Lecture, Center for the Study of Aging and Human Development, Duke University, December, 1979

"Changing Family Patterns and Rural Policies," James Sprunt Institute, Keansville, N.C., October, 1979

"Health Policy for American Families," School of Public Health, University of North Carolina, Chapel Hill, September, 1979

"Families or Planner, Whose Values Set Policies?," Appalachian Regional Commission Conference, Raising a New Generation, 1979

"The Future of the Family," Convocation Address at Eastern Carolina University, 1979

"At Risk Families," Keynote Speech, Blue Ridge Institute, 1979

Invited Talks (Cont.)

"The Corporation and the Family," Aspen Institute for Humanistic Studies, Aspen, Colorado, 1978

"Child Abuse: Cross Cultural Perspectives," Primary Care Seminar, Boston University Medical Center, 1979

"Minority Families and Public Policies," Groves Conference on Marriage and Family, Washington, D.C., 1978

"A Legislative Agenda for Children," Governor's Advocacy Council on Cstblnae iel PrqhsW SibatxsW Irnhs AinrbteiW 2-89

"Defining the Family for the 21th Century," American Association for the Advancement of Science, 1978

"Social Insecurity: Breaking up Poor Families," President's Commission on Mental Health, Washington, D.C., 1977

"The Rights of Children: Moral and Legal Perspectives," Keynote address, North Carolina Home Economics Association, Raleigh, North Carolina, 1977

"Child Care Needs of Working Parents," Salem College Lifespan Center and the Council on the Status of Women, Winston Salem, North Carolina, 1977

"The Family in the 20th Century," North Carolina Family Life Council, 1977

"The Black Family in Slavery and Freedom: Implications for Research," Temple University, 1977

"The Impact of the Parent Locator Bill," Keynote Address at the Annual Meeting of the Greater Massachusetts Chapter of the National Association of Social Workers, Boston, Massachusetts, 1976

"The Future of the Family," A Bicentennial Lecture, Williams College, Maryland, 1976

Invited Talks (Cont.)

"Comparative Family Support Systems in the United States," Brandeis University, 1975

"Urban Ethnics," Department of Anthropology, Brown University, 1975

"The Urban Poor: Economically Cooperating Units in a Complex Society," Department of Anthropology, University of California, Berkeley, 1974

"New Paradigms for Urban Research," Department of Anthropology, University of North Carolina, Chapel Hill, 1974

"The Culture of Poverty Reconsidered," Massachusetts Institute of Technology, 1975

"Class, Ethnicity and Urban Kinship," Colgate College, 1974

"Black Kindreds," Department of Anthropology, Brandeis University, 1973

"Residence Patterns and Urban Housing," Department of Urban Studies, Massachusetts Institute of Technology, 1972

Duke University Committees

Academic Council, Ad Hoc Committee on Sexual Harassment, 1983

Institute of Policy Sciences, Search Committee, 1982-83

Department of Anthropology, Undergraduate Curriculum Committee, 1982-83

Academic Council, elected member, 1981-1982

Dean's Committee on Dance, 1981-1982

Advisory Board, Duke Council on Aging and Human Development, 1980-1982

Duke University Committees (Cont.)

Undergraduate Curriculum Committee, Department of Anthropology, 1980-1982

Committee on Courses of Instruction, Arts, and Sciences, Trinity College, 1979-1981

Selection Committee, Duke Endowment Awards for Excellence in Teaching, 1979

Task Force on Student Health, 1978

Faculty Fellow, Few Federation, 1977

Black Studies Committee, 1976-1978

Undergraduate Faculty Council of Arts and Sciences, 1976-1978

North Carolina Public Service

Durham Commission on Teenage Pregnancy, 1984-1985

Juvenile Justice Research Advisory Committe, Child Advocacy Commission of Durham, 1981-1982

Member, North Carolina Chapter of the National Black Child Development Institute

Member, Governor's Task Force on Creating An Age Integrated Society

Head, Governor's Task Force on the Family, 1976

Advisory Board, North Carolina Land Trustees, Inc.

Courses Taught

Public Policy Courses

Women and Justice
Street Level Bureaucrats
Child and Family Policy: Comparative Perspectives
The Culture of Inequality
Migration and Public Policy
Anthropological Perspectives on Social Policies

Courses Taught (Cont.)

Anthropology Courses

Introduction to Cultural Anthropology
Urban Anthropology
Contemporary American Ethnography
Race and Caste in America
Anthropology and the Public Interest
Anthropology of the American South
Life Cycle: Comparative Perspectives
Qualitative Research Methods
The Afro-American Experience
Transactions in Parenthood
Anthropology and the Life Cycle
Kinship

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 2660

BEATY MAE GILLIARD, ET AL., PLAINTIFFS

v.

PHILLIP J. KIRK, ET AL., DEFENDANTS.

AFFIDAVIT OF PATRICIA HUNT

I, Judge Patricia S. Hunt, after being duly sworn depose and say:

1. I am a District Court Judge in Judicial District 15B in the State of North Carolina.

2. Prior to becoming a District Court Judge in October, 1981, I practiced law and served as a Representative in the North Carolina House of Representatives from 1972 to 1981.

3. As a member of the House of Representatives, I served on the Social Services and Health committees which studied child support in the State of North Carolina and the delivery of public assistance in the State of North Carolina.

4. As a District Court Judge holding court in Orange and Chatham counties over the last four years, I have listened to and decided at least 400 child support, child custody and juvenile court cases per year.

5. As a District Court Judge and as a member of the House of Representatives I have become knowledgeable about the child support enforcement statutes and judicial practice regarding child support in the State of North Carolina.

6. Under North Carolina statutory and case law, a District Court Judge is required to order the payment of child support based solely on the needs of the child and the needs and ability of the noncustodial parent to contribute to the support of the child.

7. When setting the amount a noncustodial parent is required to pay for the support of a child, a District Court Judge is not permitted to consider the needs of other children who may live in the household, who are not the children of the noncustodial parent.

8. Under North Carolina Law, a District Court Judge cannot order a man to pay child support unless there has been a determination of his paternity of the child and therefore, a conclusion that he has a legal responsibility for support.

9. When ordering the payment of child support, a District Court Judge specifically names the parent who is to pay the support and the child for whom the support is designated. It is a violation of a court order for a custodial parent to spend the child support on other children not designated in the child support order.

10. Under North Carolina law, parents have a legal obligation to support their children. If a custodial parent refuses to provide for the needs of his child, the child may be removed from his custody by court order and placed in the custody of the Department of Social Services.

11. As a District Court Judge, I have heard hundreds of cases in which parents, particularly fathers, have not been paying child support. Consequently, I view one of my most important duties as a District Court Judge to be the encouragement of parents to accept the financial and emotional responsibility they have placed on themselves by having children. One of my greatest tools for instilling this responsibility has been a lecture to the parents about the importance of supporting a child and thereby removing that child from the public assistance rolls. I

usually give the parents thirty (30) days to go out to find a job. I have observed the pride of accomplishment with which fathers have responded when they return to court to announce that they have obtained employment and their child will no longer be on "welfare."

12. Conversely, I have also observed the outrage a father has expressed when I have had to explain to him that even though he is providing support for his child, his child must be placed on the AFDC roles so that the other children in the household can get AFDC. One father exploded in the courtroom yelling "I won't have my child on welfare! I support him. And I'm not going to support anyone else's children!" I fully expect to continue hearing father's refusal to pay child support when they learn that their child support is being paid to the Department of Human Resources instead of to their children, and when they discover that their child is on welfare even though they are paying child support regularly.

13. If a father refuses to pay support, I have very few legal tools to utilize to force him to pay child support.

a. I can threaten a father with a jail term, or actually order him to jail, but a father does not pay child support while he is in jail, so that a jail term rarely results in income for the family.

b. I have the power to garnish wages, but I have found that fathers who fail to accept their responsibility and do not want to pay support change jobs frequently in order to avoid court orders. Another problem with garnishment of wages is that in North Carolina, especially in rural counties, the employers who do not want to bother with the paperwork of garnishment will fire their employees or will pay them under the table in order to avoid the garnishment order. Although I tell the fathers they have a legal remedy if the employer fires them, the reality is that the employers find another excuse to fire the employee.

14. Because the legal system is not effective in extracting child support from unwilling fathers, it becomes the responsibility of a District Court Judge to try to convince irresponsible fathers to take responsibility for their children.

15. As a result of the standard filing unit regulations, I can no longer encourage fathers to take responsbility [sic] for their children by talking to them about the importance of removing their children from the welfare rolls. They can no longer free their children from welfare unless they can pay enough money to support the entire family. Most of these fathers are making minimum wage, and they will never be able or willing, to pay child support for children not their legal responsibility and thus they cannot even rescue their own child. Many of these fathers grew up on welfare and they are very sensitive to the invasion of privacy the household experiences when the social workers come into their homes and to the lack of a father involved in their lives. They know and understand the pride the child feels when he or she can say "my daddy supports me." These fathers know first hand that the children will grow up knowing that they are on welfare and that their mothers depend for support on a check each month from the Department of Human Resources and that food stamps buy the groceries. It isn't the same as financial and emotional support from your own father.

16. It is my experience that responsible people obey laws because they have something to lose—their money, their reputation, their freedom, or their pride. A substantial portion of our population has no money or reputation. When we take away their pride they have nothing to lose but 30 days in jail and there the whole scenario begins again.

This, the 13th day of September, 1985.

/s/ PATRICIA S. HUNT
Patricia S. Hunt, Affiant

SWORN TO and subcribed before me this,
the 13th day of September, 1985.

/s/ LORETTA T. COBLE
Loretta T. Coble
Notary Public

My Commission Expires September 14, 1988

NORTH CAROLINA)
) **AFFIDAVIT**
WAKE COUNTY)

I, James Richardson, duly sworn, do depose and say:

1. I live in Raleigh, North Carolina, and am the father of Jermaine Medlin.

2. Since the time Jermaine was born, I have been involved in his care and support. I have provided clothing, food and diapers for Jermaine, and have paid some of the household bills for Jermaine's mother, Mary Medlin. I have occasionally bought gifts for some of Mary Medlin's other children.

3. After Mary Medlin applied for AFDC for her other children, she told me that Jermaine would have to be included in the AFDC applicaton. Because I was taking care of him, I did not think he should be on public assistance and objected to this. She said that if Jermaine were not placed on AFDC, she would lost her AFDC for all her other children. Upon learning that, I reluctantly consented to having Jermaine placed on the AFDC grant.

4. Shortly after Jermaine was placed on the AFDC grant, I was contacted by Nancy Dickerson at the Child Support Enforcement Unit in Wake County. She requested that I sign a voluntary support agreement to pay approximately $165 per month. I asked if all the money would go to Jermaine she explained that if I paid that amount, only $50 would go to my child, and the rest would be kept by the state to pay for Ms. Medlin's AFDC grant. I told her that I did not think that was right because Jermaine had never been on AFDC and the state should not get Jermaine's support. Although I was, and am, interested and willing to support my son, I refused to sign the agreement unless the money would go to Jermaine.

5. Soon after that meeting, a sheriff came to my job to serve me with a warrant for criminal non-support, case

number, 85 CR 10961, Wake County. I was not there and had to pick up the warrant at the sheriff's office.

6. I hired an attorney to assist me with this case because I did not believe I should have to pay support that would not be used for my own child. My attorney was unable to obtain the results I sought, which would have allowed my child to receive all my support. He advised me to sign a support agreement in the amount of $136 a month, which I reluctantly did.

/s/ JAMES LOUIS RICHARDSON JR
James Richardson

SWORN TO and subscribed before me
this 18 day of July, 1985.

/s/ RITA H. HARRIS
Rita H. Harris
Notary Public

My Commission Expires: 14 July 1987

NORTH CAROLINA)
) **SUPPLEMENTAL AFFIDAVIT**
WAKE COUNTY)

I, Dianne Thomas, being duly sworn, depose and say:

1. I have received no direct child support from John Pennington, the father of my son Sherrod, since April 11, 1985.

2. I was informed by my worker in the Wake County IV-D Unit that she had a meeting with John Pennington about support for Sherrod. On May 22, 1985, John Pennington signed a Voluntary Support Agreement and Order in Wake County 85 CVD 3433. This Agreement requires him to pay child support of $87 month, beginning 7/1/85.

3. As far as I know, John Pennington did pay the support due for July, because I received a $50 disregard check at the end of August.

4. Since April, 1985 when Mr. Pennington stopped paying support voluntarily, he has not visited Sherrod. Prior to that time, he visited Sherrod on a regular basis, generally taking his son with him to his home in Durham every other weekend.

5. Mr. Pennington is extremely opposed to his son being on welfare benefits, and has told me that he stopped seeing his son because I now receive AFDC for Sherrod.

6. Sherrod is very upset that his father no longer visits him. He frequently asks me why his daddy does not come to see him anymore. Since the time his father has stopped visitation, Sherrod has begun to wet his bed on a frequent basis. Also since the visitation stopped, Sherrod has become much more disruptive, especially in school. Furthermore, his performance in school seems to have declined.

7. It is my opinion that the lack of visitation with his father has severely affected Sherrod, causing the bedwetting, disruptive behavior and poor school performance. I

cannot think of any other aspects of Sherrod's life which have changed or might have caused these behavioral problems.

8. My AFDC check is currently $246 per month. If John Pennington pays support as required by the order, I will be entitled to the $50 disregard at the end of the month following the month the support is paid.

This the 16th Day of September, 1985.

/s/ DIANNE THOMAS
Dianne Thomas

SWORN TO and subscribed before me
this 16th day of September, 1985.

/s/ GERALDINE B. SANDEN
Geraldine B. Sanden
Notary Public

My Commission Expires: August 20, 1990

Mullins/yb

STATE OF NORTH CAROLINA

Wake County

File No. 85CVD 3433

Film No.

In the General Court of Justice
IV-D# 487113 District Court Division

Plaintiff: Wake Co., ex rel Dianne Thomas

ID # 20020143850

Address: 914 E. Lane St.

City, State, Zip: Raleigh, NC 27601'

VOLUNTARY SUPPORT AGREEMENT AND ORDER

G.S. 110-132, 133

VERSUS

Defendant's D.O.B.	Race	Social Security Number
02/01/43	B	243-64-4711

Defendant: John Pennington

Address: 32 Burgess Lane

City, State, Zip: Durham, N. C. 27707

Defendant's employer: Roadway Express

Address:

City, State, Zip: Durham, NC

I, the undersigned reside at the address stated above and acknowledge that I am a responsible parent as defined in G.S. 110-129(3) and do freely and voluntarily agree to contribute to the support of my dependent child or children named below:

NAME OF CHILD	Date of Birth	ADDRESS
John Sherrod Thomas	02/21/78	914 E. Lane St., Raleigh, NC

I agree to make payments to the Clerk of Superior Court of the county named below to be used for the support of my dependent child or children to be disbursed as follows: **Delivered to the N.C. Dept. of Human Resources for so long as the dependent child(ren) receive(s) public assistance or the caretaker requests child support collection services; but if no public assistance funds are being expended for the dependent child(ren) and the caretaker desires no further child support collection services, the clerk shall direct payments to the caretaker of the dependent child(ren) for the care and benefit of such child(ren).**

I agree that no credit will be given for payments, gifts, or purchases for minor children ~~other that set out in this order.~~

Amount of payment	Date 1st payment due	Date subsequent payment due	County to which payment to be made
$ 87.00	07/01/85	Monthly	Wake

I further agree to pay the following sum as reimbursement for past public assistance paid for my dependent child or children according to the terms listed below.

Amount of reimbursement and terms of payment

AOC-CV-607
Rev. 2/85

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I fully understand that this Agreement to Support when duly signed by me and when approved by a District Court Judge and filed in the office of the Superior Court Clerk shall have the same force and effect, retroactively and prospectively, as an order of Support in District Court. Further, I understand that this Agreement may be enforced and modified in the same manner as provided by law for Orders of Child Support. I agree to pay the costs of court in this action.

Date	Signature of defendant
May 22, 1985	John Pennington

I certify that the defendant personally appeared before me this day and acknowledged the due execution of this instrument.

Date	Signature
05/22/85 SEAL	Joanne W Brannon
State	**Title of certifying officer**
North Carolina	~~Asst./Deputy Clerk of Court~~ Notary

My Commission Expires 11-24-86

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INSTRUCTIONS

All payments under this agreement should be in the form of cash, money order or official bank check, made payable to the Clerk of Superior Court and must be made at or mailed to the Office of the Clerk before the due date. Any delinquency may be punishable by civil contempt of court. Please note the file number shown on the reverse with all correspondence.

ORDER

The voluntary support agreement duly executed on the reverse side is hereby, approved and hence forth shall have the same force and effect, retroactively and prospectively, in accordance with the terms of this agreement, as an Order of the Court and shall be enforceable and subject to modification in the same manner as is provided by law for orders of this Court entered in Child Support Cases.

Date	5 June 85
Signature of Judge	Mary L Cothwell

THE SECRETARY OF HEALTH AND HUMAN SERVICES
Washington, D.C. 20201

The Honorable George Bush
President of the Senate
Washington, DC 20510

25 May 1983

Dear Mr. President:

Enclosed for the consideration of the Congress is a draft bill "To amend the Social Security Act to make certain program and administrative improvements in the programs of aid to families with dependent children and supplemental security income, and for other purposes." When enacted, the bill may be cited as the "Social Welfare Amendments of 1983". Additionally, a section-by-section summary of the bill, and a table showing the budgetary effects of each section for fiscal years 1984 through 1987, are enclosed for your convenience.

The draft bill carries out recommendations in the President's budget for fiscal year 1984. These amendments will assure that limited Federal and State resources are spent as effectively as possible. To this end, several amendments to the program of aid to families with dependent children carry forward the thrust of improvements made by the Omnibus Budget Reconciliation Act of 1981 and the Tax Equity and Fiscal Responsibility Act of 1982. The WIN program would be repealed; in its place, the community work experience program is strengthened and made mandatory, and employment search must be required of applicants and recipients. Emphasis is placed on assisting applicants and recipients to become self-reliant as soon as possible and to move back into regular employment and avoid long-term welfare dependency.

Additionally, this bill contains a group of related amendments to establish uniform rules on the family members who must file together for AFDC, and the situa-

tions in which income must be counted. In general, the parents, sisters, and brothers living together with a dependent child must all be included; the option of excluding a sibling with income, for example, would no longer be available. Similarly, if a minor mother living with her own parents is receiving aid, her parents' income must also be taken into consideration. Improvements such as these are expected to result in payment of AFDC that much more realistically reflects the actual home situation.

The AFDC amendments made by title I of this bill are expected to reduce Federal costs by $646 million in fiscal year 1984 and $841 million in fiscal year 1985 (including savings attributable to repeal of the Work Incentive (WIN) program authorization). The SSI amendment made by section 202 would reduce Federal costs by $14 million and $15 million in fiscal years 1984 and 1985, respectively.

We urge that the Congress promptly enact this proposed legislation ensuring important fiscal and administrative improvements.

We are advised by the Office of Management and Budget that enactment of the enclosed draft legislation would be in accord with the program of the President.

Sincerely,

/s/ MARGARET W. HECKLER

Margaret W. Heckler
Secretary

Enclosures

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

Civil Action No. 2660

BEATY MAE GILLIARD; SAMUEL ODELL DAVIS; LORRAINE GILLIARD; LORETTA GILLIARD; THOMAS GILLIARD; DANA GILLIARD; GREGORY GILLIARD; REGINALD GILLIARD; AND SAMUEL DAVIS JR. GILLIARD, MINORS, BY THEIR MOTHER AND NEXT FRIEND, BEATY MAE GILLIARD, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

PHILLIP J. KIRK, SECRETARY, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, IN HIS OFFICIAL CAPACITY, AND C. BARRY MCCARTY, CHAIRMAN, NORTH CAROLINA SOCIAL SERVICES COMMISSION, IN HIS OFFICIAL CAPACITY, DEFENDANTS AND THIRD-PARTY PLAINTIFFS,

v.

OTIS R. BOWEN, M.D., SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, THIRD-PARTY DEFENDANT.

MOTION TO STAY MEMORANDUM OF DECISION PENDING APPEAL

NOW COME defendants herein, pursuant to Rule 62(d) of the Federal Rules of Civil Procedure, and move this Court for an order staying the Court's order filed May 7, 1986, ordering defendants to pay to plaintiffs certain sums in AFDC benefits and to pay plaintiffs costs and attorneys fees. Defendants have given notice of appeal in the above captioned case and it would be premature to take certain

ordered administrative steps until the issues on appeal are ultimately decided. Because defendants are certain State officials sued in their official capacities, and who have or will have adequate resources to pay the award of money to plaintiff if the order appealed from is modified or affirmed by the Circuit Court, defendants move that no supersedeas bond be required as a condition to the entry of the stay order.

This the 15th day of May, 1986.

Respectfully submitted,

LACY H. THORNBURG
Attorney General

/s/ CATHERINE C. MCLAMB
Catherine C. McLamb
Associate Attorney General

/s/ LEMUEL W. HINTON
Lemuel W. Hinton
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Releigh, NC 27602
Telephone: (919) 733-4618

Supreme Court of the United States

No. 86-509

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT

v.

BEATY MAE GILLIARD, ET AL.

December 8, 1986

APPEAL from the United States District Court for the Western District of North Carolina.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with 86-564, *Phillip J. Kirk, Secretary, North Carolina Department of Human Resources, et al.* v. *Beaty Mae Gilliard, et al.*, and a total of one hour is allotted for oral argument.

Supreme Court of the United States

No. 86-564

PHILLIP J. KIRK, SECRETARY OF NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, ET AL., APPELLANTS

v.

BEATY MAE GILLIARD, ET AL.

December 8, 1986

APPEAL from the United States District Court for the Western District of North Carolina.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with 86-509, *Otis R. Bowen, Secretary of Health and Human Services* v. *Beaty Mae Gilliard, et al.*, and a total of one hour is allotted for oral argument.

U.S. GOVERNMENT PRINTING OFFICE 1987—181-483/40504